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[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 92-2370

HPY, INC.
Plaintiff-Appellant.

v.

AUTHORITY OF ELECTRIC POWER, ET AL
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Jose Antonio Fuste, U.S. District Judge]

Before

Cyr, Circuit Judge,
Boudin, Circuit Judge,
and Burns, Senior District Judge.

Francisco J. Amundaray-Rodriguez, Mirta E. Rodriguez-Mora, Attorney, Department of Justice, Adrian Mercado and Mercado & Soto on brief for appellant. Reina Colon De Rodriguez, Acting Solicitor General, Department of Justice, Carlos Lugo Fiol, Assistant Solicitor General, Department of Justice, Arturo Trias, Miguel R. Garay Auban, Pedro Santiago-Torres, Jorge Marrero Narvaez, and Trias, Acevedo & Otero on brief for appellees.

April 15, 1993

* Of the District of Oregon, sitting by designation

Per Curiam. HPY, Inc., brought this action under 42 U.S.C. § 1983 against three public authorities in Puerto Rico, certain of their officials, and John Does 1 through 1,000. The agencies are the Electric Power Authority, the Puerto Rico Aqueduct and Sewer Authority and the Rural Housing Administration. The heart of the complaint was the following allegation:

> "On or about 1985, squatters, without valid title or authorization from the plaintiff started massive land invasions on said properties [belonging to plaintiff]. The squatters, also Defendants of [sic] this suit, encouraged and abetted by the other Defendants, proceeded to construct or build shacks and houses on Plaintiff's properties."

This, said the complaint, comprised a deprivation of property rights "without due process and without due compensation."

The defendants moved to dismiss the complaint for failure to state a claim. Fed. R. Civ. P. 12(b)(6). In opposing the motion, HPY offered

a few more factual allegations. Specifically, it alleged that squatters had occupied its land and that some or all of the named defendants had encouraged the invasion and abetted the squatters by supplying public facilities like power to the squatters and even constructing or assisting the squatters to construct shacks. The district court ultimately dismissed the complaint, with prejudice, for failure to state a claim, observing that "we are as likely to squeeze blood from a stone as we are to squeeze any more facts from this complaint . . . ." HPY appeals.[1]

We affirm the district court. Section 1983 creates a claim for injuries done by anyone who "acting under color of" state law deprives the victim of any "rights, privileges, or immunities" protected under the Constitution.

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[1] After filing its brief with this court, HPY filed two informative motions. One motion amended a page reference included in its brief; the second provided us with supplemental support for its argument. We grant both motions.

The original complaint did not explain what the named defendants had done under color or state law, but we will take the complaint on this appeal as illuminated by HPY's oppositions to the motions to dismiss. Even in this posture, and allowing HPY the benefits of liberal pleading rules, 5 Wright & Miller, Federal Practice and Procedure § 1219 (1990), we cannot see how HPY can premise a claim under section 1983 upon the facts alleged.

We will assume arguendo that the color of state law requirement is met as to the named defendants (since they are governmental entities and officials) and that HPY's property has been physically occupied and its value diminished. But if the actions of the named defendants are not authorized by local law or regulation, then there is no constitutional violation so long as local law affords a remedy for any tortious misconduct. Hudson v, Palmer, 468 U.S. 517, 533 (1984) (unauthorized property

seizure of state employees not a constitutional deprivation is state remedy afforded). Defendants assert that there is a remedy under local law, 32 L.P.R.A. § 3077.

HPY neither alleged the absence of such a remedy in the complaint nor countered defendants' assertion in this court (HPY did not file a reply brief.

Alternatively, if HPY is alleging that the abetting of the trespass is authorized by Puerto Rican law, conceivably a taking claim would arise and the Constitution would require compensation. But again there is no constitutional deprivation so long as Puerto Rico provides an appropriate remedy to secure compensation for takings. Williamson Planning Commission v. Hamilton Bank, 473 U.S. 172, 194 (1985). Once again, the defendants assert that such a remedy exists under Puerto Rican law, see Culebras Enterprises Corp. v. Rivera

Rios, 813 F. 2d 506, 513 (1st Cir. 1987), and once again there is no contrary allegation in the complaint and no counter to defendants' assertion by way of reply brief.

HPY also complains that the dismissal should have been without prejudice in light of the liberal leave-to-amend policies followed by the courts. Here, however, HPY filed an utterly uninformative complaint. We have effectively treated the additional material scattered in its three oppositions filed in the district court as amendments to the complaint. Even so, HPY has still failed to state a claim, nor has it filed a reply in this court responding to the authorities just recited (which were set forth in the answering briefs). Accordingly, we do not think that the dismissal with prejudice represents an abuse of discretion.

Affirmed.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 92-2370

HPY, INC.,

Plaintiff-Appellant,

v.

ELECTRIC POWER AUTHORITY, ET AL.,

Defendants-Appellees.

JUDGMENT

Entered: April 15, 1993

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Puerto Rico.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

FRANCIS P. SCIGLIANO

Clerk

[cc: Mr. Amundaray-Rodriguez and Ms. Colon De Rodriguez]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 92-2370

HPY, INC.

Plaintiff, Appellant.

v.

AUTHORITY OF ELECTRIC POWER, ET AL

Defendants, Appellees.

BEFORE

CYR, Circuit Judge,

BOUDIN, Circuit Judge,

and BURNS*, Senior District Judge.

A-10

ORDER OF COURT

Entered May 11, 1993

Upon consideration of Appellant's petition for rehearing,

It is ordered that said petition be denied.

By the Court:

FRANCIS P. SCIGLIANO

Clerk

(cc: Messrs. Rodriguez Mora, Soto-Balbas, Mercado, Garay Auban)

(cc: Messrs. Trias, Lugo Fiol, Marrero Narvaez)

(cc: Messrs. Santiago Torres, Amundaray-Rodriguez)

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* Of the District of Oregon, sitting by designation

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

HPY, INC. Plaintiff.	*	Civil No. 92-1522 (JAF)
v.	*	
PUERTO RICO ELECTRIC POWER AUTHORITY; JOSE A. DEL VALLE; PUERTO RICO AQUEDUCT AND SEWER AUTHORITY; ENG. MARIA MARGARITA IRIZARRY; RURAL HOUSING ADMINISTRATION; GAMALIER RODRIGUEZ MERCADO, et al Defendants.	*	

JUDGMENT

Pursuant to the terms of an Order announced by the court today, judgment is now entered dismissing the complaint with prejudice.

This case is now closed for all purposes.

Concord, New Hampshire, this 7th day of October, 1992.

JOSE ANTONIO FUSTE
U. S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

HPY, INC. Plaintiff.	* Civil No. 92-1522 (JAF)
v.	*
PUERTO RICO ELECTRIC POWER AUTHORITY; JOSE A. DEL VALLE; PUERTO RICO AQUEDUCT AND SEWER AUTHORITY; ENG. MARIA MARGARITA IRIZARRY; RURAL HOUSING ADMINISTRATION;GAMALIER RODRIGUEZ MERCADO,et al, Defendants.	*

OPINION AND ORDER

Plaintiff, a Delaware corporation, brings suit under 42 U.S.C. §§ 1983 and 1985, for violation of its due process and property rights under the fourteenth amendment to the United States Constitution. The complaint alleges jurisdiction under 28 U.S.C. § 1343. Plaintiff also asserts jurisdiction under 28 U.S.C. § 1331; however, we find the complaint insufficiently developed to determine whether such federal question jurisdiction exists. Gully v. First National Bank, 299 U.S. 109 (1936). Before the court are

several motion to dismiss by codefendants Rural Housing Administration, Docket Document No. 14; Puerto Rico Aqueduct and Sewer Authority, Docket Document No. 15; Gamalier Rodriguez Mercado, Docket Document No. 19, and Maria Margarita Irizarry, Docket Document No. 16.

We dismiss the complaint for failure to state a cause of action upon which relief can be granted.

Facts

Plaintiff alleges that the defendant agencies, the Electric Power Authority, the Aqueduct and Sewer Authority, and the Rural Housing Administration, acted in violation of their rules and regulations by conspiring with other unnamed defendants to deprive plaintiff of its property rights. The precise wrongful act cannot be discerned from the complaint. However, we surmise that such conduct may have been the

supplying of power and water service to squatters in HPY, Inc., land. Plaintiff submitted with the complaint a Writ for the Execution of Judgment, issued by the Superior Court in Ponce, on March 26, 1992. Although a writ for execution of judgment is an unusual document to prove title to land, the writ establishes the plaintiff's title to the land and gives it the right to eject the present illegal occupants. However, we are unable to establish the connection of the unnamed defendants to the defendant agencies. Since we are as likely to squeeze blood from a stone as we are to squeeze any more facts from the complaint, we dismiss this action.

Fed. R. Civ. P. 8

The complaint fails to satisfy the pleading requirement of Fed. R. Civ. P. 8 on the most basic level. As aptly characterized by the First Circuit, "[i]n the menagerie of the Civil

Rules, the tiger patrolling the courthouse gates is rather tame, but 'not entirely . . . toothless.'" Correa-Martínez v. Arrillaga-Beléndez, 903 F.2d 49, 52 (1st Cir. 1990) (citing Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989). While under Fed. R. Civ. P. 12(b)(6) we must give plaintiff's complaint a highly deferential reading, construing all facts in its favor, International Paper Company v. Jay, 928 F.2d 480, 482 (1st Cir. 1991); González-Bernal v. U.S., 907 F.2d 246, 248 (1st Cir. 1990), this "rule does not entitle a plaintiff to rest on 'subjective characterizations' or conclusory description of 'a general scenario which could be dominated by unpleaded facts.'" Correa-Martínez v. Arrillaga-Beléndez, 903 F.2d at 53 (citing Dewey v. Univ. of New Hampshire, 694 F.2d 1, 3 (1st Cir. 1982), cert. denied, 461 U.S. 944 (1983). The pleading must give the court a fair idea of plaintiff's complaint so that it may see if there is some legal basis for

recovery. Moore's Federal Practice § 8.13 at 8-73 (1992). Fed. R. Civ. P. 8(f) requires that "[a]ll pleadings shall be so construed as to do substantial justice." That means substantial justice for both parties. A claim such as this one, which is so lacking in substance, does an injustice to the defendants.

In this complaint, we have no indication of what actually occurred. Plaintiff incorporates a judgment from the Superior Court in Ponce into the complaint. However, this judgment informs us of little other than that plaintiff is part owner of the named properties and that there are individuals illegally occupying the property. The complaint's only substantive allegation is that the squatters ejected by the state court judgment were "encouraged and abetted" by the defendant agencies in building shacks and houses. There are no facts to support this allegation. And the allegation itself is not even a fact, but rather a conclusion which needs

facts to make any sense out of it.

Plaintiff is bringing suit under sections 1983 and 1985. The First Circuit has stated that, where plaintiff is alleging the violation of the civil rights statutes, "we insist that the claim at least set forth minimal facts, not subjective characterizations, as to who did what to whom and why." Dewey v. University of New Hampshire, 694 F.2d 1, 3 (1st Cir.), cert. denied, 461 U.S. 944 (1982); Gilbert V. Cambridge, 932 F.2d 51,62 (1st Cir.), cert. denied, 112 S. Ct. 192 (1991) ("We have been particularly insistent in section 1983 cases to require a fair degree of specificity -- a foundation of material facts -- to survive a motion to dismiss.").

The First Circuit also requires that in complaints under the civil rights statutes that allege conspiracy, such as plaintiff alleges under section 1985, "some factual basis supporting the existence of a conspiracy must be

pled when a conspiracy is alleged in a civil rights case." Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Francis-Sobel v. University of Maine, 597 F.2d 15, 17 (1st Cir.), cert. denied, 444 U.S. 949 (1979); Slotnick v. Staviskey, 560 F.2d 31, 33 (1st Cir. 1977), cert. denied, 434 U.S. 1077 (1978). This complaint does not set forth any facts, let alone minimal facts. The plaintiff has not established any connection between the defendant agencies and a violation of plaintiff's civil rights. No action under 42 U.S.C. §§ 1983 and 1985 can be sustained on the basis of such an empty complaint.

Conclusion

We grant defendants' motions to dismiss. Judgment shall be entered dismissing the complaint.

IT IS SO ORDERED.

Concord, New Hampshire, this 7th day of October, 1992.

JOSE ANTONIO FUSTE

U. S. District Judge

IN THE UNITES STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

	*
HPY, INC.	*CIVIL NO.:
PLAINTIFF	*
	*CIVIL RIGHTS ACTION
VS.	*INJUNCTIVE RELIEF
	*DAMAGES AND PUNITIVE
ELECTRIC POWER AUTHORITY	*DAMAGES SOUGHT
JOSE A. DEL VALLE;	*
AQUEDUCT AND SEWER	*
AUTHORITY, ING. MARIA	*PLAINTIFF DEMAND
MARGARITA IRIZARRY;	*
RURAL HOUSING	*TRIAL BY JURY
ADMINISTRATION; GAMALIER	*
RODRIGUEZ MERCADO;	*
JOHN DOE 1 Through 1,000	*
DEFENDANTS	*
**********	

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff, through its undersigned attorneys and before this Honorable Court respectfully state, allege and pray:

I. JURISDICTION OF THIS COURT

1. This is an action under 42 USCA sections 1983-1985 (Federal Civil Rights Act) seeking

injunctive relief against the unreasonable, oppressive, abusive and discriminatory use of powers allegedly conferred by state law to the above named Defendants. The jurisdiction of this Court is invoked under said 42 USCA Sections 1983-1985 on the grounds that the actions and conduct of the above named Defendants under color of state law have deprived Plaintiff of its Constitutional Property Rights without the substantive and procedural due process of law guaranteed to Plaintiff by the Constitution of the United States of America. Jurisdiction of this Court is also invoked under 28 USCA sections 1331 and 1343, since this action arises under the Fifth and Fourteenth Amendments of the Constitution of the United States of America, and wherein the matter in controversy exceeds the sum of fifty thousand dollars ($50,000.00) exclusive of interest and cost.

2. Relief is also sought in the form of damages as against the aforesaid Defendants under the aforesaid 42 USCA Sections 1983-1985 and the Fifth and Fourteenth Amendments of the Constitution of the United States of America and denial of substantive and procedural due process.

II. PARTIES TO THE ACTION

3. Plaintiff is a citizen of the United States of America and is incorporated in the State of Delaware.

4. Defendant **ELECTRIC POWER AUTHORITY** is a public corporation having a judicial personality separate and apart from that of the Commonwealth of Puerto Rico, is made a party to this complaint because in the capacity stated hereinabove, acting under color of state law engaged in unlawful, illegal, discriminatory and abusive acts, which have deprived Plaintiff of its property without substantive and procedural

due process of law, by ignoring its own rules and regulations and the law that created it, all of which acts and actions are contrary to the Constitution of the United States of America.

(4a) Defendant José A. Del Valle is the Executive Director of the Electric Power Authority who under color of State Law violated Plaintiff's Civil Rights and continuously denied plaintiff of substantive and procedural due process as guaranteed by the U.S. Constitution.

5. Defendant **AQUEDUCT AND SEWER AUTHORITY** is a public corporation having a judicial personality separate and apart from that of the Commonwealth of Puerto Rico, is made a party to this complaint because in the capacity stated hereinabove, acting under color of state law engaged in unlawful, illegal, discriminatory and abusive acts, which have deprived Plaintiff of their property without substantive and procedural due process of law, by ignoring its

own rules and regulations and the law that created it, all of which acts and actions are contrary to the Constitution of the United States of America.

(5a) Defendant **ING. MARIA MARGARITA IRIZARRY** is the Executive Director of the **AQUEDUCT AND SEWER AUTHORITY** who under color of State Law violated Plaintiff's Civil Rights and continuously denied plaintiff of substantive and procedural due process as guaranteed by the U.S. Constitution.

6. Defendant **RURAL HOUSING ADMINISTRATION** is a public entity having a judicial personality separate and apart from that of the Commonwealth of Puerto Rico, is made a party to this complaint because in the capacity stated hereinabove, acting under color of state law engaged in unlawful, illegal, discriminatory and abusive acts, which have deprived Plaintiff of their property without substantive and procedural due process of law, by ignoring its

own rules and regulations and the law that created it, all of which acts and actions are contrary to the Constitution of the United States of America.

(6a) Defendant **GAMALIER RODRIGUEZ MERCADO** is the Executive Director of the **RURAL HOUSING ADMINISTRATION** who under color of State Law violated Plaintiff's Civil Rights and continuously denied plaintiff of substantive and procedural due process as guaranteed by the U.S. Constitution.

(6b) Defendants **John Doe 1 through 1,000** are those persons as yet unknown, who violated Plaintiff's Civil Rights and together with the other defendants mentioned before deprived plaintiff of their property rights and property in violation of their substantive and procedural rights guaranteed by the U.S. Constitution under the Fifth and Fourteenth Amendment.

III. CAUSE OF ACTION

7. Plaintiff is the owner of a series of parcel of lands (hereinafter referred to as the "Properties"), of which in the Registry of the Property of Puerto Rico are described in the Spanish language as follows:

> -----(A)-----RÚSTICA: Parcela de terreno que radica en el Barrio Canas del término municipal de Ponce, Puerto Rico, con un área superficial de VEINTISÉIS PUNTO SEIS MIL SETECIENTOS VEINTE CUERDAS, equivalentes a CIENTO CUATRO MIL OCHOCIENTOS CUARENTA PUNTO TRES MIL OCHOCIENTOS OCHENTA Y TRES METROS CUADRADOS (104,840.3883. Colinda por el Norte con parte de la finca principal en dos direcciones de la cual se segregó las noventa cuerdas de las que la presente es un resto, propiedad de la Sindicatura de la Sociedad Mario Mercado e Hijos, en una distancia la primera dirección de novecientos cincuenta y seis punto quince metros, y la segunda dirección en una distancia de doscientos setenta y tres punto cuatrocientos noventa y seis metros; por el Sur y en una sola dirección y distancia de mil ciento ochenta y ocho punto seiscientos setenta metros con la parcela descrita con la Letra "E" en el plano levantado por el Ingeniero Rafael Dosal Lines; por el Este, en

una sola dirección y distancia de tres punto quinientos setenta y cuatro metros, con la Urbanización Punto Oro; por el Oeste, en una sola dirección y distancia de ciento dos punto ochenta y cinco metros con terrenos de finca principal conocida por Hacienda Matilde, propiedad de la Sindicatura de la Sociedad Mario Mercado e Hijos y de la cual se segregó la parcela de cincuenta cuerdas de la cual éste es resto. Esta parcela está marcada "A" en el plano de segregación levantado por el Ingeniero Rafael Dosal Lines.--------

-----La parcela aquí descrita es el resto de la de este número luego de deducirse de su cabida de noventa cuerdas las parcelas segregadas y que indican las notas al margen de la anterior inscripción primera.

-----Finca: antes número 35,564 de Ponce I, hoy la número 5868 de Ponce II, aparece descrita al folio 165 vuelto del tomo: antes 1263 de Ponce I, hoy 521 de Ponce II. ("PROPIEDAD HPY -A").

-----(B)-----RÚSTICA: Parcela de terreno que radica en el Barrio Canas del término municipal de Ponce, Puerto Rico, con una cabida de ONCE PUNTO SEIS MIL SEISCIENTOS SESENTA Y SEIS CUERDAS iguales a CUARENTA Y CINCO MIL OCHOCIENTOS CINCUENTA Y CUATRO PUNTO CUATRO MIL CUARENTA Y SEIS METROS CUADRADOS (45,854,4046), en lindes por el Norte, con una parcela identificada con la letra (A) en el plano de segregación levantado por el Ingeniero Rafael Dosal Lines, o sea, con más terrenos de la parcela

de noventa cuerdas, de cuyo resto, se segrega esta parcela, siendo dicha colindancia una sola alineación de mil ciento cincuenta y cinco punto trescientos cincuenta (1,155.350) metros; por el Sur, en una sola alineación de mil ciento treinta y nueve punto trescientos ochenta y siete metros, colinda con terrenos segregados de la parcela de noventa cuerdas identificada como Parcela "B" en el plano levantado por el Ingeniero Rafael Dosal Lines antes referido; por el Este, en una sola alineación de cuarenta punto quince metros colinda con la Urbanización Punto Oro; y por el Oeste en una sola alineación de cuarenta y uno punto quinientos cuatro metros, colinda con más terrenos de la finca principal conocida por Hacienda Matilde, propiedad de la Sociedad Mario Mercado e Hijos.

-----Finca: antes 43,077 de Ponce I, hoy la número 5869 de Ponce II, aparece descrita al folio 111 del tomo: antes 1440 de Ponce I, hoy el 598 de Ponce II. ("PROPIEDAD HPY-B").

-----(C)-----RÚSTICA: Predio de terreno que radica en el Barrio Canas del término municipal de Ponce, Puerto Rico, con una cabida superficial de CIENTO ONCE MIL TRESCIENTOS CUARENTA Y SIETE METROS CUADRADOS CON CINCUENTA Y CINCO CENTÍMETROS DE OTRO (111,347.55) equivalentes a VEINTE Y OCHO CUERDAS CON TRES MIL TRESCIENTOS TREINTA Y TRES MILÉSIMAS DE OTRA (28,3333) colindando por el Norte, con las restantes sesenta y uno punto seis

mil seiscientos sesenta y siete cuerdas de las noventa cuerdas originales, en una distancia de mil ciento treinta y nueve punto quinientos ochenta y siete metros (1,139,587) y un rumbo de setenta y ocho grados cuarenta y seis minutos y cincuenta y cuatro segundos Norte al Este. Por el Sur, con terrenos de la Urbanización Punto Oro en una distancia de mil noventa y cinco punto seiscientos y diez y ocho metros (1,095.618) a un rumbo de setenta y ocho grados cincuenta y siete minutos con cincuenta y tres segundos Sur al Oeste. Por el Este, con terrenos de la Urbanización Punto Oro, en una distancia de sesenta y cinco punto novecientos treinta y ocho metros (65.938) con un rumbo de cuatro grado, dos minutos y tres segundos Sur al Este, y una distancia de treinta y siete punto cero setenta y dos metros (37.072), con un rumbo de tres grados, cuarenta y un minutos y cuarenta y siete segundos Sur a Oeste. Por el Oeste, con terrenos de la finca principal conocida por Hacienda Matilde, propiedad de la Sociedad Mario Mercado e Hijos de donde se segregó la parcela de noventa cuerdas de la cual la parcela que aquí se describe es segregación en una distancia de ciento uno punto ciento ochenta y cinco metros (101.185) con un rumbo de viente y seis grados, tres minutos y siete segundos Norte al Oeste.

-----Finca: antes número 39,436 de Ponce I, hoy la número 5867 de Ponce II, aparece descrita al folio 115 del tomo: antes 1374 de Ponce I, hoy el 578 de Ponce II. ("PROPIEDAD HPY -

C").

-----(D)-----RÚSTICA: Parcela de terreno que radica en el Barrio Canas del término municipal de Ponce, Puerto Rico, con un área superficial de cuarenta y cinco mil ochocientos cuarenta y nueve punto tres mil quinientos treinta y nueve metros cuadrados (45,849.3539) m/c, equivalentes a once punto seiscientos sesenta y seis (11.666) cuerdas. Colinda por el Norte, en una sola dirección y una distancia de mil ciento setenta punto novecientos diecisiete metros con la parcela marcada "A" en el plano de segregación levantado por el Ingeniero Rafael Dosal Lines; por el Sur, en una sola dirección y distancia de mil ciento cincuenta y cinco punto trescientos cincuenta metros con la parcela marcada "C" en el antes referido plano que fuera segregada de la finca de noventa cuerdas de cuyo resto se segrega esta parcela; por el Este, en una sola dirección con terrenos de la Urbanización Punto Oro en una distancia de treinta y nueve punto cuatrocientos ochenta y cuatro metros; y por el Oeste, en una sola dirección y una distancia de cuarenta y uno punto cero sesenta y cinco metros, con terrenos de la Hacienda Matilde, propiedad de la Sociedad Mario Mercado e Hijos de la cual se segregaron las noventa cuerdas de cuyo resto se segrega esta parcela.

-----Finca: antes número 44,915 de Ponce I, hoy la número 5870 de Ponce II, aparece descrita al folio 282 del tomo: antes 1488 de Ponce I, hoy el

625 de Ponce II. ("PROPIEDAD HPY - D").

-----(E)-----RÚSTICA: Parcela de terreno radicada en el Barrio Canas del término municipal de Ponce, Puerto Rico, con una cabida superficial de ONCE PUNTO SEISCIENTOS SESENTA Y SEIS (11.666) CUERDAS, equivalentes a CUARENTA Y CINCO MIL OCHOCIENTOS CUARENTA Y NUEVE PUNTO TRES MIL QUINIENTOS TREINTA Y NUEVE METROS. Colinda por el Norte, en una sola dirección y distancia de mil ciento ochenta y ocho punto seiscientos setenta metros, con la parcela marcada "A" del plano de segregación levantado por el Ingeniero Rafael Dosal Lines; por el Sur, en una sola dirección y distancia de mil ciento setenta punto novecientos diecisiete metros con la parcela marcada "D" en el plano de segregación referido y que fuera segregada de la finca de novena cuerdas de cuyo resto se segrega la parcela aquí descrita; por el Este, en una sola dirección con terrenos de la Urbanización Punto Oro en una distancia de treinta y ocho punto novecientos noventa y tres metros; y por el Oeste, en una sola dirección y distancia de cuarenta punto doscientos cuarenta y tres metros con terrenos de la Hacienda Matilde propiedad de la Sindicatura de la Sociedad de Mario Mercado e Hijos de la cual se segregaron las noventa cuerdas de cuyo resto se segrega esta parcela.

-----Finca: antes número 44,916 de Ponce I, hoy la número 9463 de Ponce II aparece descrita al folio 290 del

tomo: antes 1488 de Ponce I, hoy 625 de Ponce II. ("PROPIEDAD HPY - E").

8. On or about 1985, squatters, without valid title or authorization from the Plaintiff started massive land invasions on said properties. The squatters, also Defendants of this suit, encouraged and abetted by the other Defendants, proceeded to construct or build shacks and houses on Plaintiff's properties.

9. On or about June 1987, it was decided by the Superior Court in Ponce on Civil Case CS-86-2817 that any further construction or additions on the properties would constitute an act of bad faith on the part of the illegal squatters.

10. On or about May 1990, the Superior Court of Ponce handed down a Resolution based on evidence presented on CS-86-2817 and on the consolidated case No. CS-85-1459 where it concluded that the invasors had not acted in good faith when they illegally entered and took possession of Plaintiff's properties. (See Exhibit I).

11. Notwithstanding the Resolution handed down by the Superior Court of Ponce, all the Defendants have continued to unlawfully, illegally and abusively deprive Plaintiff of its property and property rights without due process of law and without due compensation thus violating rights guaranteed to Plaintiff by the Constitution of the United States of America, particularly the Fifth and Fourteenth Amendments.

12. The unlawful acts under taken by the. Defendants, as so determined by the Superior Court in Ponce by the judgment rendered on June 4, 1991, have caused are causing and will continue to cause irreparable damages and injuries to Plaintiff in that Defendants promoted invasion of Plaintiff's properties without any compensation and has not only impaired Plaintiff's Constitutional Rights to the Free Exercise of its property right, but also has completely transformed the nature of

Plaintiff's properties, thus diminishing its value.

13. Plaintiff is without adequate state remedies at law and in equity to redress the irreparable injuries described in the preceding paragraphs.

14. The actions of Defendants described herein of intentionally promoting and abetting in depriving Plaintiff of its property rights have been performed under color of Commonwealth Statutes and contrary to the resolution emitted by the Superior Court of Ponce. Such actions taken thereunder and herein complained of are illegal, unlawful, oppressive and abusive as they constitute a violation of the Constitution of the United States of America and the Federal Civil Rights Act.

15. Unless the mandatory injunction previously issued by the Superior Court of Ponce against

Defendants, ordering them to immediately and forthwith restore the properties to its original state and condition and return the same to Plaintiff is complied with the, Plaintiff will continue to be subject of abusive, illegal, unlawful and oppressive violations of their Constitutional Rights by Defendants.

16. Plaintiff, by reasons of the facts set forth in the preceding paragraphs have suffered damages in excess of 30 million ($30,000,000.00) dollars.

VII. PUNITIVE DAMAGES

17. Plaintiff requests that the Defendants individually be assessed punitive damages as permitted in Sec. 1983-85 actions; **Smith v. Wade** 461 U.S. 30 (1980), as in this case there has been a reckless and callous disregard for plaintiff's rights and to deter similar conduct in the future. **Gutiérrez-**

Rodríguez v. Cartagena 882 F2d 553 (1 st. Cir. 1989). An award of no less than **Forty Million Dollars ($40,000,000.00)** is not unreasonable in this case.

WHEREFORE, Plaintiff respectfully pray that this Honorable Court grant the following remedies:

1. That it find that Defendants individually or collectively violated Plaintiff's Civil Rights as established under the Civil Rights Act as well as the Constitution of the United States..

2. That it restrain and permanently enjoin Defendants from continuing their abusive, discriminatory, illegal acts described above.

3. That the Defendants be adjudged and decreed jointly and severally liable to Plaintiff for the amount of no less that Forty Millions

($40,000,000.00) Dollars for damages caused to Plaintiff plus $20,000,000.00 for punitive damages.

4. Such other and further relief as the Court may deem just and equitable, including costs, expenses, interest and attorney's fees.

In San Juan, Puerto Rico, this day of April, 1992.

MERCADO & SOTO

P.O. BOX 4839

OLD SAN JUAN, P.R. 00902

Tel. (809) 723-5434

JUAN B. SOTO BALBAS

USDC-PR-130305

CERTIFIED TRANSLATION

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN DIVISION

H.P.Y., INC.,	*	CIVIL NO.: 87-6584
Plaintiff,	*	IN RE:
vs.	*	
COMMONWEALTH OF	*	
PUERTO RICO	*	
Defendants	*	

****

COMPLAINT

BEFORE THIS HONORABLE COURT:

COMES NOW H.P.Y., INC., represented by its attorneys who sign below and very respectfully state, allege and pray:

1. That the plaintiff is the owner of the following land located in Ponce, Puerto Rico.

RURAL: A parcel of land located in Canas

Ward in the municipal district of Ponce, Puerto Rico with a surface area of twenty-six point six thousand seven hundred twenty cuerdas, equivalent to one hundred four thousand eight hundred forty point three thousand eight hundred eighty-three (104,840.3883) square meters, bounded on the North by the main property, from which the ninety cuerdas were subdivided in two directions, one for nine hundred fifty-six point zero fifteen (956.015) meters, and the other for two hundred seventy-three point four hundred ninety-six (273.496) meters; on the South by Parcel E, for one thousand one hundred eighty-eight point six hundred seventy (1,188.670) meters, on the East for three point five hundred seventy-four (3.574) meters, by the Punto Oro Development, and on the West for one hundred two point zero eighty-five (102.085) meters by land belonging to the property of the Hacienda Matilde, from

which it was subdivided. This parcel is marked with the letter A on the subdivision map made by the engineer, Rafael Dosal.

RURAL: Piece of Land that is located in the Canas Ward in the municipal district of Ponce, Puerto Rico, with a surface area of Ninety (90) cuerdas, equivalent to thirty-five hectares, thirty-seven ares and thirty-six centares, which is bounded on the North by land from the main parcel from which it is subdivided, on the South, by the Punta Oro Development, that is, land that was subdivided from the main parcel; on the East by land from the main parcel from which it is subdivided and on the West by the Punto de Oro Development and partially by land from the Ferré Development.

RURAL: Piece of land located in Canas

Ward in the municipal district of Ponce, Puerto Rico, with a surface area of one hundred eleven thousand three hundred forty-seven square meters and fifty-five centimeters (111,347.55) equivalent to twenty-eight and three thousand three hundred thirty-three ten-thousandths cuerdas (28,3333) bounded on the North by the remaining sixty-one point six thousand six hundred sixty-seven (61.6667) cuerdas of the original Ninety Cuerdas, for a distance of one thousand one hundred thirty-seven meters (1,139.587) (sic) and in a direction of seventy-eight degrees, forty-six minutes and fifty-four seconds North by East. On the South, by land belonging to the Punto de Oro Development for a distance of one thousand ninety-five point six hundred and eighteen meters (1,095.618) in a direction of seventy-eight degrees, fifty-seven minutes and fifty-three seconds South by West. On the

East, by land belonging to the Punto Oro Development, for a distance of sixty-five point nine hundred thirty-eight (65.938) meters in a direction of four degrees, two minutes and three seconds South by East, and a distance of thirty-seven point zero seventy-two (37.072) meters, in a direction of three degrees, forty-one minutes and forty-seven seconds South by West. On the West. On the West, by land belonging to the Mario Mercado and Sons Partnership, from which the Ninety Cuerda parcel was subdivided from which the parcel described herein is subdivided, in a distance of one hundred one point one hundred eighty-five (101.185) meters in a direction of twenty-six degrees, thirteen minutes and seven seconds North by West.

PARCEL: of land located in Canas Ward in the municipal district of Ponce, Puerto Rico with an area of eleven point six

thousand six hundred sixty-six (11,666) (sic) cuerdas equivalent to forty-five thousand eight hundred fifty-four point four thousand forty-six (45,854.4046) square meters, bounded on the North by a parcel identified by the letter "A" on the subdivision map made by the engineer, Rafael Dosal Lines, in other words, with more land from the ninety cuerda parcel from which this parcel is subdivided, said boundary being a single alignment of one thousand one hundred fifty-five point three hundred fifty (1,155.350) meters; on the South by one single alignment of one thousand one hundred thirty-nine point five hundred eighty-seven meters (1139.587); bounded by land subdivided from the Ninety Cuerda parcel identified as Parcel "B" in the above-mentioned map made by the engineer, Rafael Dosal Lines; on the East, in one single alignment of forty point fifteen (40.15) meters bounded

by the Punto Oro Development, and on the West by one single alignment of forty-one point five hundred four (41.504) meters, bounded by more land from the main parcel known as Hacienda Matilde, property belonging to the Mario Mercado and Sons Partnership.

PARCEL: of land located in Canas Ward in the municipal district of Ponce, Puerto Rico with a surface area of forty-five thousand eight hundred forty-nine point three thousand five hundred thirty-nine (45,849.3539) square meters, equivalent to eleven point six hundred sixty-six (11.666) cuerdas. Bounded on the North, in one single direction and for a distance of one thousand one hundred seventy point nine hundred seventeen (1,170,917) (sic) meters by the parcel marked "A" on the map made by the engineer, Rafael Dosal Lines and which is described below; on the South, in a single direction and for a

distance of one thousand one hundred fifty-five point three hundred fifty (1,155.350) meters by the parcel marked "C" on the above-mentioned map that was subdivided from the Ninety Cuerda parcel from which remainder this parcel is subdivided; on the East, in a single direction by land belonging to the Punto Oro Development for a distance of thirty-nine point four hundred eighty-four (39.484) meters; and on the West in a single direction and for a distance of forty-one point zero sixty-five (41.065) meters, by property from the Hacienda Matilde, belonging to the Mario Mercado and Sons Partnership from which the Ninety Cuerdas were subdivided from which remainder this parcel is subdivided.

2. That several unknown persons have encroached upon said land.

3. That the plaintiff has tried to file criminal charges against said encroachers in accordance with 33 LPRA 4283.

4. That the Honorable Secretary of Justice ordered the Police and the Prosecutors not to prosecute said complaints depriving the plaintiff of his legal remedy to evict said persons.

5. That the actions by the Government of the Commonwealth of Puerto Rico has turned said land into a public housing project without any compensation whatsoever for the plaintiff.

6. It has been requested that the Honorable Court declare said land public property and order the Government of the Commonwealth of Puerto Rico to pay an adequate compensation for said land.

WHEREFORE, it is very respectfully requested that the Honorable Court pronounce judgment declaring that said land has been converted to public property, belonging to the Commonwealth of Puerto Rico, and requiring the Government of the Commonwealth of Puerto Rico to pay its fair value to the plaintiff.

In San Juan, Puerto Rico, on November 20, 1987.

WOODS, ROSENBAUM, LUCKEROTH
& PEREZ GONZALEZ
Box 1292
Hato Rey, Puerto Rico 00919
Telephone: 759-8181

BY: Sgd. (illegible)
Ronald L. Rosenbaum

Translator's note: (1) A rubber stamp for the General Justice Court of the Commonwealth of Puerto Rico, Superior Court, Ponce Division, appears on each page; (2) Internal Revenue stamps; (3) Time stamped San Juan Judicial Center, November 20, 1987, 2:16 p.m.

Commonwealth of Puerto Rico

GENERAL JUSTICE COURT

SUPERIOR COURT

PONCE DIVISION

Courtroom F

H.P.Y., INC.,	*	CIVIL NO.: N CS87-2621
Plaintiff,	*	IN RE:
vs.	*	INVERSE CONDEMNATION
COMMONWEALTH	*	
OF PUERTO RICO	*	
Defendant	*	

****

- M I N U T E S -

After the case had been called for the pretrial conference, appearances were made by Atty. Ronald L. Rosenbaum, in representation of the plaintiff, and by Atty. Angel L. Flores Fernández, representing the defendant.

The plaintiff requests a term of ninety days to verify whether his party's property was included in a condemnation case.

The Court accedes to what has been requested and grants the plaintiff a term of sixty days to report as to whether or not it is going to continue with the proceedings in this case in view of the information that it has submitted concerning a case that has been filed in the Condemnation Court in which the property that is the subject of this complaint is possibly included.

The report is left to the attorneys for the parties and shall be subsequently submitted if necessary after investigating the pending matter.

It is ordered that the attorneys for the parties shall be notified through a copy of the minutes.

n/c Atty. Ronald L. Rosenbaum

Atty. Angel L. Flores Fernández

12/7/88

Minutes Book No. NAME OF BAILIFF: **JOSE VEGA**

Name of Judge: **HON. LEIDA GONZALEZ DEGRO**

I CERTIFY: **PAULITA COLON RIVERA**

(Clerk)

Name of Reporter: BY: **MARIA M. GUZMAN**

(IN CHAMBERS) (Chief Deputy Clerk)

(Sgd.)

DATE: **DECEMBER 7, 1988**

CIVIL MINUTES

(SUPERIOR AND DISTRICT COURT)

OAT 838 (REV. JULY 1975)

CERTIFIED TRANSLATION

IN THE SUPERIOR COURT OF PUERTO RICO

PONCE DIVISION

H.P.Y., INC.,	*	CIVIL NO.: CS-87-2621 (F)
Plaintiff,	*	IN RE:
vs.	*	INVERSE CONDEMNATION
COMMONWEALTH OF	*	
PUERTO RICO	*	
Defendant	*	

****

MOTION FOR DISMISSAL WITHOUT PREJUDICE

BEFORE THIS HONORABLE COURT:

COMES NOW the plaintiff through its attorneys who sign below and very respectfully state and pray:

1. That our surveyors have verified that the encumbered area affected that is the subject of

the present litigation is within the condemned property for which we request the dismissal of the present case without prejudice.

WHEREFORE, it is very respectfully requested that this Honorable Court dismiss the present action without prejudice.

San Juan, Puerto Rico, June 6, 1989.

I CERTIFY: Having sent a true and exact copy of the present Motion to Atty. Angel L. Flores Fernández, Department of Justice, Miramar, Puerto Rico.

WOODS, ROSENBAUM, LUCKEROTH
& PEREZ GONZALEZ
PO BOX 1292
HATO REY, PUERTO RICO 0091
TEL: 759-8181

(Sgd./illegible)

Ronald L. Rosenbaum

CERTIFIED TRANSLATION

IN THE SUPERIOR COURT OF PUERTO RICO

PONCE DIVISION

H.P.Y., INC.,	*	CIVIL NO.: CS-87-2621
Plaintiff,	*	IN RE:
vs.	*	INVERSE CONDEMNATION
	*	
COMMONWEALTH	*	
OF PUERTO RICO	*	
Defendant	*	

****

J U D G M E N T

Having considered the motion for dismissal filed by the plaintiff and having analyzed the present case file the court **GRANTS** the dismissal and, in consequence, issues a judgment ordering the dismissal of this case with prejudice.

ENTER AND NOTIFY.

Issued in Ponce, P.R., on April 20, 1990.

(SGD.) LEIDA GONZALEZ DEGRO

SUPERIOR COURT JUDGE

CERTIFICATION

I certify that the present is a true and exact copy of the original which is in the case file and I issue it at the request of: Atty. Francisco J. Amundaray

/X/ Upon payment of fees /_/ Free of charge

Clerk (Sgd./illegible)

4/21/93

Deputy Clerk

(Sgd./illegible)

Translator's note: (1) A rubber stamp appears for the General Justice Court of the Commonwealth of Puerto Rico, Superior Court, Ponce Division; (2) Internal Revenue Stamps.

CERTIFIED TRANSLATION

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN DIVISION

	*	
COMMONWEALTH OF	*	
PUERTO RICO	*	CIVIL NO. 88-0418 (1007)
Plaintiff	*	RE: EXPROPRIATION BY
vs.	*	RIGHT OF EMINENT
	*	DOMAIN
EUFEMIA EILEEN	*	
MERCADO PARRA,	*	
ETC.	*	
Defendants	*	
HPY CORPORATION	*	
Intervener	*	

****

THIRD MOTION ON INTERVENTION

BEFORE THE HONORABLE COURT:

Comes, now, the intervening party, HPY

Corporation ("HPY") through its attorneys who sign below and very respectfully states, alleges and prays:

1. That in the Ponce case, Civil Number CS85-1459, the question of title to the expropriated property between Estate of Mario Mercado and the Intervener was not raised.

2. Attached as Exhibit A is the report of the architect, Carlos Buxó, regarding the title of HPY to 75 "cuerdas" (acres) which belong to HPY, Inc.

3. It has been verified that the error of the Government in the above-captioned case is that the Government's surveyor used a mistaken legal description and in the preparation of his measurement never consulted with the Intervener.

WHEREFORE, it is very respectfully requested that the Honorable Court allow the

requested intervention.

In San Juan, Puerto Rico, on March 30, 1990.

I CERTIFY: Having sent a true and exact copy of the previous motion, on this same date, to the Honorable Secretary of Justice, Land Cases Division, Box 192, San Juan, Puerto Rico 00902, and to Atty. A.J. Bennazar Zequeira, Banco Popular de Puerto Rico Building, Office 1501, Hato Rey, Puerto Rico 00918.

WOODS, ROSENBAUM, LUCKEROTH
& PEREZ GONZALEZ
Box 1292
Hato Rey, Puerto Rico 00919
Telephone: (809) 759-8181
BY: (Sgd.) Ronald L. Rosenbaum

CERTIFIED TRANSLATION

Commonwealth of Puerto Rico

GENERAL JUSTICE COURT

SUPERIOR COURT

SAN JUAN DIVISION

Room 1007

COMMONWEALTH OF PUERTO RICO Plaintiff	Civil No. KEF-88-0418(1007)
vs.	IN RE:
EUFEMIA EILEEN C/P EILEEN AND FOR ADRIANA LUISA MERCADO Defendant	CONDEMNATION UNDER SOVEREIGN RIGHT OF EMINENT DOMAIN

-MINUTES-

The case was called for the Follow-up Hearing set for today, at which the petitioner appeared represented by attorney William Nunez Colon. The Estate of Mario Mercado was represented by Attorney Juan Jesus Ramirez Rivera, and the intervening party appeared represented by Attorney Ronald L. Rosenbaum. As to Attorney Ramon Eugenio Melendez, the Court ordered that he be removed from the record since he is not in the case.

The hearing that was set for today is to clarify the ownership of the property that adjoins the condemned lot, specifically at points Dos Oro and Tres Oro. A request to intervene arises from HPY Corporation represented by Attorney Rosenbaum, in the sense that its concern was essentially based on the description that exhibit "A" gives of the condemned lot, since it was indicated that on the East side it had

boundaries with the Punto Oro Development.

In the conference room the parties had the opportunity to look at some blueprints and some explanations making it clear that the condemned lot borders the HPY Corporation Development on the East and not the Punto Oro Development.

Once this situation had been resolved, the Court decided that the intervention was not in order, since the State has no interest in acquiring properties from that Corporation, since it has its property outside the limits of the condemned area. As there were no problems, therefore, its intervention is not justified because there is no interest.

There was also another difficulty as to locating a piece of property which has an area of approximately 17, 19 cuerdas, which at this moment is being encroached upon by a series of individuals. The legal representation for the

Mercado Estate asks the State and requests if this property is to be acquired.

The legal representation for the expropriating agency stated that at the moment they do not have plans to acquire it, therefore, that property together with those structures and with the matters that pertain to it will continue to belong to the Mercado Estate.

It is for that reason that at this time it should be clarified that a petition to transfer some of the cases from the Ponce Court regarding the Eviction of some families that are on that property will not be included in the expropriation calendar, since, what is in order is that they continue in the Ponce Court.

That being the situation, it is therefore in order for the boundary indicated in exhibit "A" to be corrected in order to clarify all of these doubts. What is to be followed in this case is

the discussion of the assets, for which reason an assertion is going to be made to speak about the assets.

It has been anticipated that there are some matters which should be resolved by the Court before initiating the discussion of this aspect. The attorney for the interested party will provide the petitioner with information regarding some damages due to the dissolving of the partnership and other damages so that the State appraisers can be in a position to analyze this situation in order to discuss it.

It was also anticipated that we would have to discuss the matter as to whether or not the property would be considered an empty lot on the one hand, and other positions that the property had some structures whose removal would have to be deducted from the value.

In order for both parties to be able to be

prepared, the argument of this case will be continued to March 21, 1991, at nine o'clock in the morning, in hearing room (1007).

The Court made it clear that the attorney who represents the Mercado Estate requested the Court to order the payment of the consigned funds. To that effect, the Court requested that evidence of the payment of land taxes be submitted, together with any other tax lien there may be on the property in order to consider said request.

Once the aforementioned is submitted, the Court will order the payment accordingly. Even though the parties were notified of the aforementioned in open court, they will be sent a copy of these minutes.

Notified with a copy of the minutes and mailed to the attorneys of the parties today, November 28, 1990.

Attorney William Nunez Colon

Department of Justice

Division of Land Cases

Box 192

San Juan, Puerto Rico 00902

Attorney Ronald L. Rosenbaum

Box 1292

Hato Rey, Puerto Rico (illegible)

Attorney Juan Jesus (illegible)

Box 720

Mayaguez, Puerto Rico 00709

MUNUTES NO._____ Marshal: MR. RUBEN ZAYAS

JUDGE: HON. ANGEL GONZALEZ ROMAN

I certify: PAULITA SANTIAGO

Clerk

COURT REPORTER: CARMEN IRIS RIVAS

HEARING WAS RECORDED

By: (Sgd.) ANGELINA ORTIZ SANTOS

Chief Deputy Clerk

Date: October 30, 1990

Civil Minutes (Superior and District Court)

O.A.T. 838 (rev. July 1975)

CERTIFIED TRANSLATION

IN THE SUPERIOR COURT OF PUERTO RICO
PONCE DIVISION

Hearing Room B

COMMONWEALTH OF PUERTO RICO, etc. Plaintiffs vs. MARIO L. MERCADO ESTATE, etc. Defendants	*	CIVIL NO. CS85-2439 (5) IN RE: TEMPORARY INJUNCTION
ALFONSO A. HERNANDEZ ORTIZ, etc. Plaintiffs vs. MODESTO HERNANDEZ VARGAS, etc. Defendants	*	CIVIL NO. CS86-2817 (B) IN RE: PRECARIOUS EVICTION AND ACCESSION

MINUTES

At the status conference set for today Atty. Jaime Rivera Torres appeared in representation of the plaintiff, Alfonso Hernández Ortiz and in substitution of Atty. René F. Sotomayor Santos, Atty. Ronald L. Rosenbaum appeared in representation of the codefendant HPY, Atty.

Juan Jesús Ramírez appeared in representation of the Mario Mercado Estate, and Atty. Gilberto Limardo appeared, who reports that he is going to have an interview with the previous clients of Atty. Martin González (rescuers) and shall determine whom he is going to represent. Att. Carlos J. Pérez Santiago did not appear. For notifications and future calendars, it has been clarified that these are the only attorneys in the case.

The codefendant HPY requests the reopening of the original eviction case.

The Court clarifies that in a prior decision where it provided that starting from a certain date the defendants to the eviction or possessionary injunction shall be bad faith constructors, it adjudicated nothing with respect to whether these people had good faith or not before that date.

The case at bar actually involves two or three cases within the same suit. The title and boundaries must be cleared up between the Mario Mercado Estate and Alfonso Hernández. To that end, a pretrial conference is set to be held on February 11, 1991. The meeting between the attorneys shall be held on February 2, 1991, at 10:00 a.m., at the office of Atty. Ramírez in Mayagüez. That same day, February 11, a pretrial conference shall be held as to the aspect of the eviction both by HPY and of the other two plaintiffs against the squatters. Notify Att. Carlos J. Pérez Santiago of this case setting, indicating to him that he has to be prepared. Any attorney that has not participated in the conference, under his own professional responsibility, shall not be allowed to announce any evidence, in fact, the party that he represents is going to be in default, and the attorney is exposed to a complaint against him on behalf of his clients.

Based on the information supplied by the parties to the effect that in the San Juan Division it was decided that part of the property belonging to HPY where there are squatters was not expropriated, the Court grants the petition of the codefendant HPY for the reopening of the case and sets aside the voluntary dismissal of action made by this party during the visual inspection.

It is ordered that the attorneys be notified by a copy of the minutes of October 30, 1990 in the case of KEF 88-0418 (1007), which shall be attached to the record when Atty. Ramírez brings a copy. (he subsequently delivered it.) The attorneys were notified. The following were notified by way of a copy of the minutes (and with a copy of the minutes from the San Juan Division):

Atty. Juan Jesús Ramírez, Box 720, Mayagüez, PR 00709; Atty. Jaime M. Rivera, Box 208, San

Germán, PR 00753; Atty. Gilberto Limardo, Box 226, Playa Sta., Ponce, PR 00734; Atty. René F. Sotomayor Santos, Box 1747, Ponce, PR 00733; Atty. Carlos J. Pérez Santiago, Box 6930, Ponce, PR 00733;

12-10-90

Minutes Book No. 8

Bailiff: B. RAMOS

JUDGE: HON. LUIS MUÑIZ ARGUELLES

I certify: P. COLON

Reporter: WANDA I. BLANCO

By: A.J. Velázquez

Date: November 30, 1990

Trans. 12-10-90

CERTIFIED TRANSLATION

IN THE GENERAL JUSTICE COURT OF PUERTO RICO
SUPERIOR COURT - PONCE DIVISION
JUDICIAL CENTER

COMMONWEALTH OF PUERTO RICO ET AL. Plaintiffs	*	CIVIL NO. CS85-1459
v. ESTATE OF MARIO L. MERCADO, ET AL., Defendants	*	IN RE: TEMPORARY INJUNCTION
ALFONSO A. HERNANDEZ ORTIZ, ET AL. Plaintiffs	*	CIVIL NO. CS86-2817
v. MODESTO HERNANDEZ VARGAS, ET AL. Defendants	*	RE: EVICTION ACTION FOR UNLAWFUL DETAINER AND ACCESSION

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

As the present cases have been called to hold the trial on the merits regarding them, come now: (A) (I) THE ESTATE OF MARIO MERCADO RIERA — made up of: (a) Eufemia Eileen known as Eileen Mercado Parra, (b) Adriana Luisa Mercado Parra, (c) Eileen María Coffey Mercado, (d) David Mario Coffey Mercado, (e) María Luisa

Wilson Mercado, (f) Margarita María Wilson Mercado, and (g) Richard Wilson Mercado — (Civil Number CS85-1459 and CS86-2817) ("ESTATE OF MARIO MERCADO RIERA"), (II) HPY, INC. (Civil Number CS85-1429), (III) ALFONSO ANTONIO HERNANDEZ ORTIZ (Civil Number CS86-2817), hereinafter referred to as the "plaintiffs," represented by their attorneys; (B) the defendants in the above-captioned cases under the jurisdiction of this Court, some in default and others duly represented by their attorneys.

The plaintiffs in the cases of title interposed their pertinent evidence before the court; as did some of the defendants; this being the only evidence that was presented in the proceedings.

Having heard all of the evidence admitted from what has been offered, this Court makes the following:

FINDINGS OF FACT

1. The plaintiffs and their predecessors in title have had ownership and also title in fee simple recorded in the Property Registry for the following property. Said title and ownership has been the during the year immediately prior to the filing of the complaint and in prior years, to wit:

(a) THE ESTATE OF MARIO MERCADO RIERA, composed of: (a) Eufemia Eileen known as Eileen Mercado Parra, (b) Adriana Luisa Mercado Parra, (c) Eileen María Coffey Mercado, (d) David Mario Coffey Mercado, (e) María Luisa Wilson Mercado, (f) Margarita María Wilson Mercado, and (g) Richard Wilson Mercado (Civil Number CS85-1459 and CS86-2817). Said title and ownership have been during the year immediately prior to the filing of the complaint and the remaining prior years. The property of mention is described in the registry as follows:

---Parcel MT-FOUR, RURAL: Located in Canas Ward in the municipal district of Ponce, Puerto Rico with an area of SEVEN HUNDRED FIFTY-FIVE CUERDAS FIFTY-EIGHT ONE-HUNDREDTHS, equivalent to two hundred fifty-seven hectares, sixty-six ares, ninety-one centares and six hundred thirty-two millares, made up of the following portions:

---Portion A: Rural: Located in Canas Ward in the municipal district of Ponce, with an area of two hundred forty-six cuerdas seventy-three one-hundredths, equivalent to ninety-six hectares, ninety-seven ares, forty-seven centares and five hundred ninety-two millares, bounded on the North by state highway number two, in ten alignments that total fifty-eight point ninety-nine meters; on the East by land belonging to the Puerto Rico Aqueduct and Sewer Authority; Regional Office in

four alignments that total one hundred seventy-two point seventy-one meters with the portion MT-Three-Plains for an alignment of seven hundred twenty point forty-one meters; on the South by the Caribbean Sea for thirty-five alignments that total two thousand forty-seven point seventy-three meters and on the West by the Laguna de las Salinas for seven alignments that total one thousand one hundred ninety-eight point sixty-seven meters. This portion is identified in the subdivision map as parcels MT-Four-Plains-A for one hundred eighty-five cuerdas ninety-eight one-hundredths and MT-Four-Plains-B, sixty cuerdas seventy-five one-hundredths.

---Portion B: Rural: Located in Canas Ward in the municipal district of Ponce, with an area of thirty-seven cuerdas seventy-three one-hundredths, equivalent

to fourteen hectares, eighty-two ares, ninety-three centares and nine hundred ninety-two millares, bounded on the North by the portion MT-Three-Industrial of Parcel MT-Three for an alignment of two hundred seventy-one point twenty-four meters; on the East by property belonging to the Puerto Rico Social Programs for eighteen alignments that total five hundred seven point ninety-seven meters; on the South by State Highway number two, in two alignments that total two hundred sixty-six point seventy-six meters and on the West by the portion MT-Three-Escarpment of parcel MT-Three for an alignment of four hundred eighty point twelve meters. This portion is identified in the subdivision map as parcel MT-Four-Industrial.

---Portion C: Rural: Located in Canas Ward in the municipal district of Ponce,

with an area of three hundred seventy-one cuerdas twelve one-hundredths, equivalent to one hundred forty-five hectares, eighty-six ares, fifty centares and zero forty-eight millares, on the North by land belonging to Empresas Ferré for ten alignments that total nine hundred fifty-eight point ten meters, by land belonging to Nicolás Pagán for five alignments that total two hundred ninety-seven point twenty-seven meters by land belonging to Empresas Ferré for twenty-seven alignments that total seven hundred point fifty-nine meters and by land belonging to Dr. Humberto Zayas Chardón for five alignments that total two hundred eighty-three point forty-one meters; on the East, by land belonging to Punto Oro Development or for four alignments that total one thousand four hundred forty-seven point nine meters; on the South, by land belonging to Ponce West Industrial Area and land

belonging to Social Programs for thirteen alignments that total four hundred eighty-nine point ten meters and by land belonging to the Puerto Rico Land Management for fourteen alignments that total two thousand twenty-three point thirty-four meters; and on the West, by the Portion MT-Three-Escarpment of Parcel MT-Three, for an alignment of one thousand two hundred five point seventy-five meters. This portion is identified in the subdivision map as MT-Four-Escarpment.

---This has been previously recorded under property number 46,412 for Ponce I, presently number 1981 for Ponce II, and is described on page 115 of volume 1529 for Ponce I, first entry; and on page 115 of volume 669 for Ponce II.

From the property described above the following portion is the subject of this consolidated litigation:

---Portion C: Rural: Located in Canas Ward in the municipal district of Ponce, with an area of three hundred seventy-one cuerdas twelve one-hundredths, equivalent to one hundred forty-five hectares, eighty-six ares, fifty centares and zero forty-eight millares, bounded on the North by land belonging to Ferré Enterprises for ten alignments that total nine hundred fifty-eight point ten meters, by land belonging to Nicolás Pagán for five alignments that total two hundred ninety-seven point twenty-seven meters by land belonging to Ferré Enterprises for twenty-seven alignments that total seven hundred point fifty-nine meters and by land belonging to Dr. Humberto Zayas Chardón for five alignments that total two hundred eighty-three point forty-one meters; on the East by land belonging to Punto Oro Development or for four alignments that total one thousand four hundred forty-

seven point nine meters; on the South by land belonging to Ponce West Industrial Area and land belonging to Social Programs for thirteen alignments that total four hundred eighty-nine point ten meters and by land belonging to the Puerto Rico Land Management for fourteen alignments that total two thousand twenty-three point thirty-four meters; on the West by Portion MT-Three-Escarpment of Parcel MT-Three, for an alignment of one thousand two hundred five point seventy-five meters. This portion is identified in the subdivision map as MT-Four-Escarpment.

The ESTATE OF MARIO MERCADO RIVERA has had ownership of and title to said property with exclusivity over the prior partners of the Mario Mercado and Sons Partnership in accordance with the RULING issued by the Honorable Superior Court Judge, Víctor Vargas Negrón, since December 23, 1976, in virtue of the adjudication

made by this same Court in the Case CS57-2295, on the Dissolution of Partnership; this property having been consolidated with others under judicial trusteeship in said case.

(b) HPY, INC. (Civil Number CS89-1459) a corporation organized under the laws of the State of Delaware, United States of America and authorized to do business in Puerto Rico and registered with the Department of State for the Commonwealth of Puerto Rico. The properties mentioned are described in the registry as follows:

(A)---RURAL: A parcel located in Canas Ward in the municipal district of Ponce, Puerto Rico with a surface area of TWENTY-SIX POINT SIX THOUSAND SEVEN HUNDRED TWENTY CUERDAS, equivalent to ONE HUNDRED FOUR THOUSAND EIGHT HUNDRED FORTY POINT THREE THOUSAND EIGHT HUNDRED EIGHTY-THREE SQUARE METERS (104,840.3883). On the

North by part of the main property in two directions from which the ninety cuerdas were subdivided of which the present is a remainder, land belonging to the Trusteeship of the Mario Mercado and Sons Partnership, in the first direction for a distance of nine hundred fifty-six point fifteen meters, and in the second direction for a distance of two hundred seventy-three point four hundred ninety-six meters; on the South by and in one single direction and for a distance of one thousand one hundred eighty-eight point six hundred seventy meters by the parcel described with the letter "E" in the map made by the engineer, Rafael Dosal Lines; on the East, in one single direction and distance of three point five hundred seventy-four meters, by the Punto Oro Development; and on the West, in one single direction and for a distance of one hundred two point eighty-five meters by

land from the main property know as Hacienda Matilde, belonging to the Trusteeship of Mario Mercado and Sons Partnership and from which the parcel of fifty cuerdas was subdivided, of which this is a remainder. This parcel is marked "A" in the subdivision map made by the engineer, Rafael Dosal Lines.

---The parcel described here is the remainder of the one with this number after deducting from its area of ninety cuerdas the parcels subdivided and that are indicated in the margin notes for the previous first recording.

---Property: previously numbered 35,564 for Ponce I, presently number 5868 for Ponce II, is described on the back of page 165 of volume: previously 1263 for Ponce I, presently 521 for Ponce II.

(B)---RURAL: Parcel of land located in Canas Ward in the municipal district of

Ponce, Puerto Rico with an area of ELEVEN POINT SIX THOUSAND SIX HUNDRED SIXTY-SIX CUERDAS equivalent to FORTY-FIVE THOUSAND EIGHT HUNDRED FIFTY-FOUR POINT FOUR THOUSAND FORTY-SIX SQUARE METERS (45,854.4046), bounded on the North by a parcel identified by the letter (A) in the subdivision map made by the engineer, Rafael Dosal Lines, in other words, by more land from the ninety cuerda parcel from which this parcel was subdivided, said boundary being a single alignment of one thousand one hundred fifty-five point three hundred fifty (1,155.350) meters; on the South in one single alignment of one thousand one hundred thirty-nine point three hundred eighty-seven meters, bounded by land subdivided from the ninety cuerda parcel identified as Parcel "B" in the above-mentioned map made by the engineer, Rafael Dosal Lines; on the East, in one single alignment of forty point fifteen

meters bounded by the Punto Oro Development; and on the West in one single alignment of forty-one point five hundred four meters, bounded by more land from the main property known as Hacienda Matilde, property belonging to the Mario Mercado and Sons Partnership.

---Property: previously numbered 43,077 for Ponce I, presently number 5869 for Ponce II is described on page 111 of the volume: previously numbered 1440 for Ponce I, presently number 598 for Ponce II.

(C)---RURAL: Piece of land located in Canas Ward in the municipal district of Ponce, Puerto Rico with a surface area of ONE HUNDRED ELEVEN THOUSAND THREE HUNDRED FORTY-SEVEN SQUARE METERS AND FIFTY-FIVE CENTIMETERS (111,347.55) equivalent to TWENTY-EIGHT AND THREE THOUSAND THREE HUNDRED THIRTY-THREE ONE-THOUSANDTHS

CUERDAS (28,3333) bounded on the North by the remaining sixty-one point six thousand six hundred sixty-seven cuerdas from the original ninety cuerdas, for a distance of one thousand one hundred thirty-nine point five hundred eighty-seven meters (1,139.587) and in a direction of seventy-eight degrees, forty-six minutes and fifty-four seconds North by East. On the South, by land belonging to the Punto Oro Development for a distance of one thousand ninety-five point six hundred and eighteen meters (1,095.618) or in a direction of seventy-eight degrees, fifty-seven minutes and fifty-three seconds South by West. On the East, by land belonging to the Punto Oro Development, for a distance of sixty-five point nine hundred thirty-eight meters (65.938) in a direction of four degrees, two minutes and three seconds South by East, and a distance of thirty-seven point zero seventy-two meters

(37.072), in a direction of three degrees, forty-one minutes and forty-seven seconds South by West. On the West by land belonging to the main property known as Hacienda Matilde, property of the Mario Mercado and Sons Partnership, from which the ninety cuerda parcel was subdivided from which the parcel described herein was subdivided for a distance of one hundred one point one hundred eighty-five meters (101.185) in a direction of twenty-six degrees, three minutes and seven seconds North by West.

---Property: previously numbered 39,436 for Ponce I, presently number 5867 for Ponce II is described on page 115 of the volume: previously numbered 1374 for Ponce I, presently number 578 for Ponce II.

(D)---RURAL: Parcel located in Canas Ward in the municipal district of Ponce, Puerto

Rico, with a surface area of forty-five thousand eight hundred forty-nine point three thousand five hundred thirty-nine square meters (45,849.3539) sq./m., equivalent to eleven point six hundred sixty-six (11.666) cuerdas. Bounded on the North, in one single direction and for a distance of one thousand one hundred seventy point nine hundred seventeen meters by the parcel marked "A" on the map made by the engineer, Rafael Dosal Lines; on the South, in a single direction and for a distance of one thousand fifty-five point three hundred fifty meters by the parcel marked "C" on the above-mentioned map that was subdivided from the ninety cuerda property from which remainder this parcel is subdivided; on the East, in a single direction by land belonging to the Punto Oro Development for a distance of thirty-nine four hundred eighty-four meters; and on the West, in a single

direction and for a distance of forty-one point zero sixty-five meters by property from the Hacienda Matilde, belonging to the Mario Mercado and Sons Partnership from which the ninety cuerdas were subdivided from which remainder this parcel is subdivided.

---Property: previously numbered 44,915 for Ponce I, presently number 5870 for Ponce II is described on page 282 of the volume: previously 1488 for Ponce I, presently 625 for Ponce II.

(E)---RURAL: Parcel located in Canas Ward in the municipal district of Ponce, Puerto Rico with a surface area of ELEVEN POINT SIX HUNDRED SIXTY-SIX (11.666) CUERDAS, equivalent to FORTY-FIVE THOUSAND EIGHT HUNDRED FORTY-NINE POINT THREE THOUSAND FIVE HUNDRED THIRTY-NINE METERS. Bounded on the North, in one single direction and

for a distance of one thousand one hundred eighty-eight point six hundred seventy meters by the parcel marked "A" on the map made by the engineer, Rafael Dosal Lines; on the South, in a single direction and for a distance of one thousand one hundred seventy point nine hundred seventeen meters by the parcel marked "D" on the above-mentioned subdivision map, and that was subdivided from the ninety cuerda property from which remainder the parcel described herein is subdivided; on the East, in a single direction by land belonging to the Punto Oro Development for a distance of thirty-eight point nine hundred ninety-three meters; and on the West in a single direction and distance of forty point two hundred forty-three meters by property from the Hacienda Matilde, belonging to the Trusteeship of the Mario Mercado and Sons Partnership from which the ninety cuerdas were subdivided from

which remainder this parcel is subdivided. ---Property: previously numbered 44,916 for Ponce I, presently number 9463 for Ponce II is described on page 290 of the volume: previously 1488 for Ponce I, presently 625 for Ponce II.

HPY, INC. has had ownership and title to said property in accordance with the law and title law as it appears in the Property Registry for Ponce II.

(c) ALFONSO ANTONIO HERNANDEZ ORTIZ (Civil Number CS86-2817). The property mentioned is described in the Property Registry as follows:

---"RURAL: A parcel of land located in Canas Ward in the municipal district of Ponce, Puerto Rico, with an original surface area of One Hundred Fifty-Three Thousand Nine Hundred Twenty-Three Point Six Thousand Two Hundred Thirty-Six

(153,923.6236) Square Meters, equivalent to Thirty-Nine Point One Thousand Six Hundred Twenty-One (39.1621) Cuerdas, that after Thirty-Five Thousand Three Hundred Seventy-Six Point One Thousand Seven Hundred (25,376.1700) [sic] Square Meters were subdivided, equivalent to Nine Point Zero Zero Zero Seven (9.007) [sic] cuerdas that formed property number twenty seven thousand one hundred eighty-eight (27,188), there remains One Hundred Eighteen Thousand Five Hundred Forty-Six Point Four Thousand Five Hundred Thirty-Six (118,546.4536) equivalent to Thirty Point One Thousand Six Hundred Fourteen (30.1614) cuerdas, bounded on the North by Street Number One (1) to be built from the Punto Oro Development and for a distance of One Hundred Fifty-Four Thousand Two Hundred Forty-Eight (154,248) lineal Meters; on the South, and in different alignments for a distance of Five Hundred

Fifty Point Six Hundred Thirty-Seven (550.637) lineal meters by state highway number two (2) ("Ponce Bypass"); on the East for a distance of Eight Hundred Sixty-Nine Point Two Hundred Fifty-Seven (869.257) lineal meters by street Number One (1) of the Punto Oro Development and on the West in several Alignments and for a distance of Six Hundred Forty-Four Point Three Hundred Forty-One (644.341) by the Industrial Development El Tuque."

---Recorded on June 18, 1986 on the back of page 14 of volume 1,296 presently 540 for Ponce II, property number 31,640, presently 7,823, eighth entry, encumbered from its origin by a right-of-way in favor of the Commonwealth.

ALFONSO ANTONIO HERNANDEZ ORTIZ has had ownership and title to said property in accordance with the law and title law according

to what appears in the Property Registry for Ponce II.

2. In accordance with the evidence presented and believed by this Court, the defendants in the instant case, without the express or implicit authorization of the plaintiffs, and without valid title or right of any nature, entered and encroached upon the above-mentioned pieces of land and presently have built a series of shacks, huts and houses, having temporarily marked off what seems to be lots during the year 1985 and thereafter.

3. Previously this Court, and particularly in Civil Case CS86-2817, since June 4, 1987, had determined that any further additions or construction was, from then on, bad faith construction, which was subsequently ratified by this Court in its RULING of May 22, 1990 by the Honorable Superior Court Judge, Luis Muñiz Arguelles, in which this Court also established

that "(1) good faith or bad faith is a subjective concept and it may be proven that on subsequent dates the owners do not have good faith."; this Court in accordance with the evidence presented and believed determines that the defendants never had good faith in the illicit ownership of the property that was encroached upon.

4. The plaintiffs acted promptly to protect their interests in the property by going to the State Police and the Courts of this jurisdiction.

5. Having examined the consolidated case file, heard and examined the evidence and the admissions against interest made by the defendants affiants; this Court concludes as a proven fact that there has been manifest temerity in the actions of the defendants during the entire process, both extrajudicial and judicial.

CONCLUSIONS OF LAW

The plaintiffs in the case cited have been the owners for more than one year of the property described above. Before the filing of the present complaint the plaintiffs were disturbed from the possession or ownership of the property described above, because the defendants through an "act of encroachment" and without the authorization of the plaintiffs illegally entered the above-mentioned property with the intention of possessing it.

An Injunction shall be granted to retain and recover material ownership of the property, at the behest of the interested party, provided that it shows to the satisfaction of the Court, that it has been disturbed from the possession or ownership of said property, by acts that show the intent of harassing or taking it away, or when said possession or ownership has already been taken away. Civil Procedure Code, 1933,

Art. 690, 32 LPRA 3561.

In writs of possession, which is one of the actions that are exercised in the present case, only the question of possession is discussed, and not the right to said possession, nor the title of ownership to the property involved in the writ. Rivera v. Carcel, 68 DPR 365; Mena v. Llerandi, 70 DPR 176; Maldonado v. Colón, 68 SPR 340; Manrique v. Alvarez, 58 DPR 74; Gómez v. López 55 DPR 813; De Los Santos v. Seijo, 53 DPR 442; Pueblo v. Fajardo Sugar Growers Ass., 45 DPR 380; Figueroa v. Lugo y El Pueblo, 43 DPR 865; Fajardo Sugar v. Central Pasto Viejo, Inc., 41 DPR 825; Fernández v. González 41 DPR 726.

The main point in the Writ of Possession is always just a question of material and physical possession as far as occupancy is concerned, never a question of possession or right in civil possession, whether implied or legal. Pérez v. Castro, 52 DPR 573 and has the purpose of the

protection of the fact of possession, without harming the rights of the interested parties. Rodríguez v. Suárez, 71 DPR 728 and therein questions of title cannot be resolved; Sucn. Maldonado v. Maldonado, 43 DPR 678.

In writs of possession, the question to be resolved is whether the plaintiff was in possession on a given date within the year prior to the filing of the complaint and whether he was deprived of such possession. Martorell v. Municipio, 70 DPR 380; Rodríguez v. Suárez, 71 DPR 728; 32 LPRA 3562.

The writ of possession has the purpose of maintaining the ownership of the person who has it and is disrupted from it, without being able to resolve questions of title. Segarra v. Vilariño, 92 DPR 314.

From the related facts it is clear that the plaintiff, within the year prior to the filing

of the complaint had actual possession of the property that is described therein, as well as the fact that he was hindered and/or dispossessed of said possession or ownership.

In Texaco, Inc. v. González , 96 DPR 305, our Supreme Court stated:

"The writ action is available to any owner." Castán says, in the work cited, on page 456:

> "In our Code the system is different. Since Article 446, as we have just seen (our Art. 375) grants protection for all owners and Art. 1.651 of Procedural Law (Art. 690 of our Civil Procedure Code) speaks of possession or ownership, it must be understood that writs are applicable both for one and for the other, and that they can be used by the possessor as a title of ownership, the simple occupant or actual owner, the

usufructuary, the collateral holder, the obligee in a contract of antichresis, anyone using the right of retention, the lessee, the commodatary, the trustee and in a word, anyone who uses the technique of the Civil Code has possession, whether natural or civil, in the sense of owner or in a different sense."

The plaintiff, Alfonso Antonio Hernández Ortiz, has had possession since May 23, 1986, and his title has been recorded in the Property Registry since June 18 of that same year, having been presented on June 13, 1986. The complaint in the case is dated November 26, 1986. Before the filing of the case of record, the plaintiff was hindered from possession or ownership of his above-mentioned property, because the defendants, through an act of encroachment and without the authorization of the plaintiff-

owner, illegally entered on the premises of the land mentioned with the intention of partially possessing it.

The defendants admitted not having any title to oppose the plaintiffs, nor express or tacit authorization from third parties to encroach upon it. They alleged a moral right and in a case in particular law at the hands of God.

The eviction action for unlawful detainer filed by the plaintiff is predicated on the fact that there has been no payment rate or compensation of any kind on behalf of the defendants to the plaintiff, due to the total absence of title on behalf of the defendants and due to the total absence of tacit or express permission on behalf of the plaintiff-owner or from any third party that may have been able to confuse this piece of land with another. This is nothing more or less than a case of total "encroachment", that warrants the ejection of the encroaching

defendants from the land that is the subject of the complaint.

The plaintiff, ALFONSO ANTONIO HERNANDEZ ORTIZ, properly justified his title to the defendants, along with the boundaries of his property, both with a copy of his duly recorded deed and photographs (documentary evidence) and with the testimony (oral evidence) of its administrator and real estate broker; and the other plaintiffs: ESTATE OF MARIO MERCADO RIERA properly justified its title to the defendants, along with the boundaries of his property, both through a Registry Certification that is in the record, duly certified maps and photographs (documentary evidence) and with the testimony (oral evidence) of its administrator and coowner, and HPY, INC. properly justified its title to the defendants, along with the boundaries of his property, both through a Registry Certification that is in the record, duly certified maps and photographs (documentary

evidence) and with the testimony (oral evidence) of its architect and surveyor.

In cases like the present one, of illegal encroachment knowingly perpetrated on another's property, said encroachment does not create a right of privacy whatsoever for the encroachers nor does it protect its illegal possession. People who illegally and without any right whatsoever encroach on another's property, said encroachment does not create a right of privacy whatsoever for the encroachers nor does it protect their illegal encroachment. See Amezquita v. Rafael Hernández Colón, 518 F 2d. 8.

Anyone who builds in bad faith on any other person's land loses what has been built without any right to indemnity. When the defendant has precarious possession, as in the case of record the eviction is in order. See A.T.P.R. v. Padín Santiago, 104 DPR 426.

The eviction trial is one of a summary nature in which the only question is to try to recover possession of a piece of property for the person who has right to it Negrón v Corujo, 67 DPR 398; Escudero v. Mulero, 63 DPR 574; Palermo v. Tribunal, 58 DPR 359; Rivera v Santiago, 56 DPR 381; González v Colón, 49 DPR 557; Brunet v Tribunal, 45 DPR 901; and CRUV v Román, 100 DPR 318.

"In accordance with said doctrine if a defendant in eviction produces sufficient evidence that tends to show that he has some right to occupy the property and that he has title as good as or better that the plaintiff, a conflict of title arises which makes the eviction action improper." This does not occur in the litigation of record. CRUV v Román, 100 DPR 318, 322.

JUDGMENT

Having heard the findings of fact and the conclusions of the precedent law the consolidated complaints of the case of record are hereby GRANTED, and it is ORDERED that all defendants CEASE AND DESIST from hindering the plaintiffs in the possession of the property that is the subject of the present litigation; and to vacate the premises of the land that is the property of the plaintiffs, ESTATE OF MARIO MERCADO RIERA, HPY, INC. and ALFONSO ANTONIO HERNANDEZ ORTIZ, leaving them clear and available for the legitimate owners, plaintiffs, in these cases.

Costs, expenses and attorneys' fees incurred by the plaintiffs are severally imposed on the defendants. The corresponding Memorandum of Costs, Expenses and Attorneys' Fees incurred must be filed no later than ten (10) days from the filing of a copy of the notification of this

Judgment by Edict in the case record.

Notification of this judgment shall be given by notifying the attorneys for the parties and by publishing an (1) Edict in a newspaper of general circulation; this Judgment shall not be final until thirty (30) days have passed from the publication of said Edict; and executable after forty (40) days have elapsed from when the Secretaries of the Department of Social Services and Housing have been notified through certified mail with return receipt requested, according to the provisions of Article 635 of the Civil Procedure Code, in force, (32 LPRA 2836).

The Clerk of this Court shall issue the Writ for ejection once what is provided in Article 636 of the Civil Procedure Code, in force (32 LPRA 2837), has been complied with.

Enter and Notify.

Issued in Ponce, Puerto Rico, June 4, 1991."

FELIPE ORTIZ ORTIZ (SIGNED)

SUPERIOR COURT JUDGE

Translator's note: A rubber stamp for the General Justice Court of the Commonwealth of Puerto Rico, Superior Court, appears on each page of the document.

CERTIFIED TRANSLATION

IN THE SUPERIOR COURT FOR PUERTO RICO,
PONCE DIVISION

UNITED STATES OF AMERICA PRESIDENT OF THE U.S. COMMONWEALTH OF PUERTO RICO, ET AL. ALFONSO A. HERNANDEZ ORTIZ	* *ss: * * * *
Plaintiff v. ESTATE OF MARIO L. MERCADO, ET AL. MODESTO HERNANDEZ VARGAS ET AL. Defendant	*CIVIL NO. CS85-1459 * CS86-2817 * *TEMPORARY INJUNCTION * *EVICTION ACTION FOR *UNLAWFUL DETAINER *AND ACCESSION

****

NOTIFICATION OF JUDGMENT (By Regular Mail)

TO: Atty. Carlos Jesús Pérez Santiago - Box 6930 - Ponce, P.R. 00733 - Atty. Ronald L. Rosenbaum and Freddie Pérez - Box 1292 - Hato Rey, Puerto Rico 00919 - Atty. Gilberto Limardo and Pedro J. Tejada - Box 226 - Ponce Beach Station, Puerto Rico 00734 - Atty. Jaime Rivera Torres - Box 208 - San Germán, Puerto Rico 00753 - Atty. Juan Jesús Ramírez Rivera -

(delivered in person) Box 720 - Mayagüez, Puerto Rico 00709 - Mr. Secretary of the Department of Housing - Box 21365 - Río Piedras, Puerto Rico 00928. Mr. Secretary of the Department of Social Services - Central Office - Box 11398 - Santurce, Puerto Rico 00908.

The CLERK who signs below notifies you that this Court has pronounced judgment in the above-captioned case, dated June 4, 1991, which has been duly entered and filed in the case record for this matter, from which you may be informed as to the details of its terms.

And since you are or represent the party affected by the judgment for which a remedy of appeal may be established, I am addressing this notification to you, having filed a copy thereof in the case record of this case, dated June 4, 1991.

A-110

PONCE, P.R., June 4, 1991.

(Sgd.)PAULITA COLON RIVERA

GENERAL CLERK

[Rubber stamp for the General Justice Court of the Commonwealth of Puerto Rico, Superior Court, Ponce Division]

CERTIFIED TRANSLATION

REPORT TO THE HON. FELIPE ORTIZ ORTIZ

REGARDING CASES CS-85-1459/CS-86-2817

1. ANALYSIS OF THE CONSULTATION OVER LOCATION

The cases at bar arise from the Commonwealth's request to the Board of Planning for eminent domain expropriation in consultation number 86-63-1071-JGU. A sketch of the location appears in said document, drawn over the official topographical quadrangles for Peñuelas and Punta Cuchara. We suppose that said drawing was made based on the Lambert coordinates (NAD 27), since according to what we have been informed a map of the property to be expropriated (MT4-E), graphed in said systems, had been delivered to the Commonwealth.

We have graphed the portion of the property MT4-

E and the HPY Inc. parcel on a copy of the Peñuelas quadrangle (see figure 1) and we also transferred said information to a copy of the sketch submitted to the Board (see figure 2). In comparing the images we notice that the proposed location does not include all of MT4-E and moreover does not include the parcel belonging to HPY Inc. We believe that the sketch is not attempting to draw the property to be expropriated exactly, since the scale of the quadrangle does not allow it. However, the offset of the eastern boundary of the proposed location with regard to the eastern boundary of MT-4E is around 260 meters, which happens to be too big of a mistake to attribute it to impreciseness in the drawing of the map.

Additionally, we must indicate that in the petition for eminent domain expropriation of the property MT4-E [Case KEF-88-148 (1007)] before the Superior Court of Puerto Rico (San Juan Division) it has been indicated that the

cadastral coding for the parcel to be expropriated is 388-000-008-06-000 which in fact defines MT4-E. It is worth noting that the cadastral coding of the parcel belonging to HPY Inc. is 388-000-009-16 (see figures 3A and 3B).

Based on what has been previously stated it is evident that there was never any intention of expropriating the parcel belong to HPY Inc.

2. ANALYSIS OF THE MEASUREMENT OF THE PROPERTY TO BE EXPROPRIATED

The measurement of the property to be expropriated was assigned to Land Surveyor Ismael Cordero (Lic. #1496). The land surveyor Cordero completed said work in 1987 and submitted his map to the Rural Housing Administration (AVR-initials in Spanish). Said map was used by the AVR to define the parcel to be expropriated. The land surveyor Cordero includes in his measurement map a location map

also graphed on the official quadrangle on the Lambert coordinates (NAD 27). If we compare this drawing with the ones previously mentioned we see that the property measured by land surveyor Cordero includes part of the parcel belonging to HPY, Inc. (See figure 4). Also notice that the southern boundary of the property (which is the stream) does not coincide with the stream graphed on the official quadrangle. The difference in the location of both streams is from 20 to 60 meters on the scale of the map.

We believe that part of the problem arises due to an incorrect identification of points 3-ORO and 23-ORO and the fact that for some reason a conscientious study of the deeds of the property involved was not done. Said study would have indicated that the property MT4-E originally bordered the property Punto Oro at "four alignments that" totalled "one thousand four hundred and forty-seven point nine meters." It

also would have indicated that lots A, B, C, D and E that make up the parcel belonging to HPY, Inc. border MT-4-E for two alignments that total 1282.415 meters. The difference between this figure and the previous one (1447.9 m) are some 165.5 meters that are the other two alignments that would be missing. These two alignments are part of the border with Punto Oro. The measurement map of land surveyor Cordero indicates two alignments with Punto Oro, arriving at the stream, totalling 1073.09 meters. Nevertheless, the map of Punto Oro indicates that it does not border the stream. We have no other alternative but to conclude that boundary taken by land surveyor Cordero is not correct.

3. POSITIVE IDENTIFICATION OF POINT 3-ORO

As we indicated above, the evidence also indicates that the points 3-ORO and 2-ORO taken by Mr. Cordero were not correct. In order to

corroborate said thesis an inverse trisection was taken at the point which was indicated to us as the correct 3-ORO. For corroboration we relied on the Lambert coordinates (NAD 27) that appeared in the maps of land surveyor Hernán Lugo Rodríguez and architect Carlos A. Buxó (original data of engineer Rafael Dosal Lines), which differ by 4 millimeters (X) and 3 millimeters (Y) from each other. Nine vertices were observed using a transit WILD-T2 with a direct reading of 1" arc, reading at a direct and inverted position (see figures 5 and 6). Of these nine vertices of the new system NAD 83, 2 were eliminated since apparently they had changed positions since 1965.

The initial calculation was made with the vertices from the Caja de Muertos lighthouse, the one at Cayo Cardona and the Don Q. chimney. Then observation equations were formulated for the 7 vertices and an adjustment for minimum squares was carried out. After the adjustment

the rectangular coordinates (X,Y) were transformed to geographical coordinates (latitude and longitude) and were modified by the change of the spheroid through an interpolation between the vertices ETRA PRS. PONCE 2 AND CAYO CARDONA EXCENTRICA (see figure 7). After making these transformations for coordinates NAD 27 the 4 data were compared, resulting in variations in the order of 0.07 and 0.15 arc seconds in the positions. Therefore, we conclude that this is definitely the correct point and the line defined by points 2- and 3-ORO is the northern boundary of the parcel belonging to HPY, Inc., as well as the line 2-ORO to 1-ORO defines its western boundary. (See appendix I for the corroboration of the computations).

4. STATION PUNTO ORO IDENTIFIED BY LAND SURVEYOR CORDERO

The measurement performed by land surveyor

Cordero is also given in Lambert coordinates (NAD 27) and according to the evidence that he presents in his map he used an inverse trisection of the vertices of the Mercedita chimney, Ponce (he doesn't indicate whether it is Ponce 2 or Ponce US GS), Caja de Muertos and the Lighthouse of Cardona island to locate its initial station AVR. However, in his computations which were given to us the location of AVR is made by an intersection from vertex Ponce 2 and the Cardona island Lighthouse. In verifying the computations we were able to notice that one of the vertices used was Ponce USGS and not Ponce 2. Once AVR had been located, the point that land surveyor Cordero identified as 3-ORO was defined. Its coordinates, obtained by Cordero differ from those obtained by land surveyor Lugo Torres/Lugo Rodríguez and engineer Dosal Lines for some 300 meter at X and some 100 meters at Y, which translates into 3 arc seconds in latitude and 10 arc seconds in longitude. Undoubtedly, the

point taken as 3-ORO by Cordero is not correct and therefore 2-ORO is not correct either. It is worth noting that the line 2- at 3-ORO (Cordero) is almost parallel to 2- at 3-ORO (Lugo Torres/Lugo Rodríguez, Dosal Lines).

5. IDENTIFICATION OF PUNTO 1-ORO

Figure 8 has been prepared with the data from the measurement map of land surveyor Cordero, the data from the maps of the Punto Oro Development prepared by engineer Dosal Lines and by land surveyors Lugo Torres/Lugo Rodríguez and the measurement map of the industrial area of Punto Oro prepared by engineer Dosal Lines. This shows the lapping of the parcel measured by Cordero with the property belonging to HPY, Inc. It also shows that the eastern boundary of that parcel coincides approximately with the slope that borders Punto Oro for which reason this means that the construction of the development very probably occupied part of the property

belonging to HPY, Inc. and MT4-E.

CONCLUSION

As may be deduced from all of the evidence presented, it is obvious to conclude that a mistake was made in including a substantial part of the property belonging to HPY, Inc. in the parcel that the Commonwealth proposes to expropriate from the Mario Mercado Estate to divide into lots in the Punta Diamante area. It is also apparent that there was an error in the location of the stream that forms the southern boundary of said parcel, since it does not agree with the position given for it in the official Peñuelas quadrangle. The first mistake I believe is due mainly to an erroneous identification of points 2- and 3-ORO. The second is more difficult to find and explanation for, without more complete information of the work performed by Land Surveyor Cordero.

Today (June 15) I received over the phone the rectified position of a vertex that Land Surveyor Hernán Lugo Rodríguez obtained this time through a more exact job, since the original job was performed through stadiametry. This vertex is sufficiently close to 3-ORO and if its offset is applied at this point then its position would differ from the one found through inverse trisection by only 0.016 arc seconds in latitude and 0.091 arc seconds in longitude, much better than before.

In order for the 200 cuerda parcel that is going to be expropriated from the Mercado Estate to be defined, I suggest taking as a basis the Feliciano and Associates map and defining a parcel of the size indicated, and if necessary modify these calculated boundary in order to not interfere with the already established possession lines. In this way the cost to the public treasury is substantially reduced.

CERTIFIED TRANSLATION

FORM DJ-103

REV. 8/60

CERTIFICATION NOTEBOOK

COMMONWEALTH OF PUERTO RICO

DEPARTMENT OF JUSTICE

PROPERTY REGISTRY

SECTION II FOR PONCE

[Seal for the Property Registry]

CERTIFICATION

concerning plot number (35,564) 5868 recorded on page 159 of volume (1263) 521 of Ponce II.

Issued on the 22nd of October of 1987 at the behest of Atty. Ronald L. Rosenbaum

A-123

Commonwealth of Puerto Rico

Department of Justice

Property Registry

Section II for Ponce

ATTORNEY JOSE L. PURCELL TERRON, Property Registrar for Puerto Rico, Section II for Ponce and its Mortgage Demarcation:

I C E R T I F Y

-----That at the request of Atty. Ronald L. Rosenbaum, we have examined the legible books for this Registry in our custody, and it APPEARS from these:

-----FIRST: That the piece of property: previously number 35,564 for Ponce I, presently number 5868 for Ponce II appears described on the back of page 165 of the volume: previously 1263 for Ponce I, presently 521 for Ponce II, 3rd entry as follows:

RURAL: A parcel of land located in Canas Ward in the municipal district of Ponce, Puerto Rico with a surface area of TWENTY-SIX POINT SIX THOUSAND SEVEN HUNDRED TWENTY CUERDAS, equivalent to ONE HUNDRED FOUR THOUSAND EIGHT HUNDRED FORTY POINT THREE THOUSAND EIGHT HUNDRED EIGHTY-THREE SQUARE METERS (104,840.3883). Bounded on the North by part of the main property, in two directions from which the ninety cuerdas were subdivided of which the present is a remainder, belonging to the Trusteeship of the Mario Mercado & Sons Partnership, in the first direction for a distance of nine hundred fifty-six point zero fifteen meters, and in the second direction for a distance of two hundred seventy-three point four hundred ninety-six meters; on the South, and in one sole direction and for a distance of one thousand one hundred eighty-eight point six hundred seventy meters by the parcel

described with the letter "E" on the map prepared by the engineer, Rafael Dosal Lines; on the East, in one sole direction and for a distance of three point five hundred seventy-four meters, by the Punto Oro Development; and on the West, in one sole direction and a distance of one hundred two point eighty-five meters by land belonging to the property known as the Hacienda Matilde, property belonging to the Trusteeship for the Mario Mercado & Sons Partnership and from which the ninety cuerdas parcel was subdivided, of which this is a remainder. This parcel is marked "A" on the subdivision map made by the Engineer, Rafael Dosal Lines.

-----The parcel described herein is the remainder of the one with this number after subtracting from its area of ninety cuerdas the parcels that are subdivided and indicated in the margin notes from the prior first entry.

-----SECOND: That the piece of property described above is entered on behalf of H.P.Y. INC., a corporation organized and existing under the laws of the State of Delaware, represented herein by William Joseph Luckerath, its legal representative, of legal age, divorced, an attorney and resident of Santurce, Puerto Rico, with accredited authority, who acquired it by way of purchase at a public auction for a price of $39,655.00; in virtue of deed number 33, executed in San Juan, on March 12, 1985, before the notary Rafael E. Robles Díaz; (as referred to in the en) I mean, which together with other supplementary documents resulted in the 7th entry of said property on the back of page 169 of the previously mentioned volume.

-----THIRD: That the status of said property as far as encumbrances and liens is as follows:

-----BY WAY OF ORIGIN: From the 1st entry of said property made on page 159 of the volume:

previously 1263 for Ponce I, presently 521 for Ponce II, it appears that this property is subject to the following encumbrances due to its origin: Entry for a complaint for dissolution of partnership, civil case number CS-57-2295 and rights-of-way in the name of the Commonwealth of Puerto Rico.

-----ON ITS OWN BEHALF: Said property is found to be FREE OF ENCUMBRANCES:

O B S E R V A T I O N

That on page 22 of volume I of the Registry of Liens for the Commonwealth of Puerto Rico for Ponce II there is a lien entered against James T. Barnes (prior owner of this property) for a piece of urban property located in Canas Ward with an area of 90 cuerdas, and with the following boundaries: NW: Parcel no. 2; SW: 410-0000-010-01; SE: Parcel no. 15 and NE: Parcel no. 15 to answer to the amounts of:

$76,670.28 for taxes; $7,666.96 for surcharges and $18,606.36 for costs for a total of: $102,943.60, due on property taxes; entered with the order number: 088, case number: 630106409; date of presentation and recording: December 26, 1979 and date of the certificate: December 26, 1979.

-----That on page 99 of volume I of the Registry of Liens due to the Commonwealth of Puerto Rico of Ponce II there is a lien entered against James T. Barnes of P.R. Inc., (prior owner of this property) on a piece of rural property, located in Punto Oro - Main Property, with an area of 90 cuerdas, and with the following boundaries: North: Municipal Dump and Jardines del Caribe Development; South: Road from Ponce to Guayanilla; East: Canas River and West: Pastillo River; to answer to the sums of $76,670.28 for taxes; $17,976.12 for surcharges and $7,666.96 for costs, for a total of: $102,313.36 due for property taxes; entered with

the order number: 0394; date of presentation and recording: October 20, 1980 and date of the certificate, October 17, 1980.

-----From the indexes of the Registry of Liens owed to the Commonwealth of Puerto Rico of Ponce I, numbers 65, 66, 67, 68, 69 and 70 for Ponce I and numbers 1, 2, 3, 4 and 5 for Ponce II; for the indexes of Federal Liens number 1 for Ponce I and number 1 for Ponce II and from the indexes of the Registry of Judgments number 2 for Ponce I and number 1 for Ponce II, the specific name of H.P.Y. Inc. DOES NOT APPEAR, looking under the letter "H" as an encumbered debtor.

-----No certification is given as to other particulars.

-----AND FOR THE RECORD, in accordance with what has been requested, I issue the present document which I sign, seal and initial in Ponce, Puerto Rico at three p.m. on October 22, 1987.

(Sgd./illegible)

Fees: $6.00 Atty. José L. Purcell Terrón

Comp. no. C-1894303-$6.00 Property Registrar

Act 3/August 12, 1982 Ponce Section II

Eb

[Department of Justice seal]

CERTIFIED TRANSLATION

FORM DJ-103

REV. 8/60

CERTIFICATION NOTEBOOK

COMMONWEALTH OF PUERTO RICO

DEPARTMENT OF JUSTICE

PROPERTY REGISTRY

SECTION II FOR PONCE

[Seal for the Property Registry]

CERTIFICATION

concerning plot number (39,436) 5867 recorded on page 115 of volume (1374) 578 of Ponce II.

Issued on the 22nd of October of 1987 at the behest of Atty. Ronald L. Rosenbaum

A-132

Commonwealth of Puerto Rico

Department of Justice

Property Registry

Section II for Ponce

ATTORNEY JOSE L. PURCELL TERRON, Property Registrar for Puerto Rico, Section II for Ponce and its Mortgage Demarcation:

I C E R T I F Y

-----That at the request of Atty. Ronald L. Rosenbaum, we have examined the legible books for this Registry in our custody, and it APPEARS from these:

-----FIRST: That the piece of property: previously number 39,436 for Ponce I, presently number 5867 for Ponce II appears described on page 115 of the volume: previously 1374 for Ponce I, presently 578 for Ponce II, 1st entry as follows:

RURAL: Piece of land located in Canas Ward in the municipal district of Ponce, Puerto Rico, with a surface area of ONE HUNDRED ELEVEN THOUSAND THREE HUNDRED FORTY-SEVEN SQUARE METERS AND FIFTY-FIVE CENTIMETERS (111,347.55) equivalent to TWENTY-EIGHT AND THREE THOUSAND THREE HUNDRED THIRTY-THREE TEN-THOUSANDTHS CUERDAS (28.3333) bounded on the North by the remaining sixty-one point six thousand six hundred sixty-seven cuerdas of the original ninety cuerdas, for a distance of one thousand one hundred thirty-nine point five hundred eighty-seven meters (1,139.587) and in a direction of seventy-eight degrees, forty-six minutes and fifty-four seconds North by East. On the South by land belonging to the Punto de Oro Development for a distance of one thousand ninety-five point six hundred eighteen meters (1,095.618) and a direction of seventy-eight degrees, fifty-

seven minutes and fifty-three seconds South by West. On the East, by land belonging to the Punto Oro Development, for a distance of sixty-five point nine hundred thirty-eight (65.938) meters in a direction of four degrees, two minutes and three seconds South by East, and a distance of thirty-seven point zero seventy-two meters (37.072), in a direction of three degrees, forty-one minutes and forty-seven seconds South by West. On the West, by land belonging to the Mario Mercado and Sons Partnership, from which the ninety cuerda parcel was subdivided from which the parcel described herein is subdivided, for a distance of one hundred one point one hundred eighty-five meters (101.185) in a direction of twenty-six degrees, thirteen minutes and seven seconds North by West.

-----SECOND: That the piece of property

described above is entered on behalf of H.P.Y. INC., a corporation organized and existing under the laws of the State of Delaware, represented in the execution by Mildred Ulmo, of legal age, single, a secretary and resident of Carolina, with accredited authority, who acquired it by way of purchase for a price of $282,000.00; in virtue of deed number 40, executed in San Juan, on November 10, 1981, before the notary William Joseph Luckeroth, written in the English language; as referred to in the 6th entry of said property, made on page 52 of volume 705 for Ponce II.

-----THIRD: That the status of said property as far as encumbrances and liens is as follows:

-----BY WAY OF ORIGIN: From the 1st entry of said property made on page 115 of the volume: previously 1374 for Ponce I, presently 578 for Ponce II, it appears that this property is subject to the following encumbrances due to its

origin: Entry for a complaint for dissolution of partnership, civil case number CS-57-2295 and rights-of-way in the name of the Commonwealth of Puerto Rico.

-----ON ITS OWN BEHALF: Said property is found to be FREE OF ENCUMBRANCES:

O B S E R V A T I O N

-----That on page 22 of volume I of the Registry of Liens for the Commonwealth of Puerto Rico for Ponce II there is a lien entered against James T. Barnes (prior owner of this property) for a piece of urban property located in Canas Ward with an area of 90 cuerdas, and with the following boundaries: NW: Parcel no. 2; SW: 410-0000-010-01; SE: Parcel no. 15 and NE: Parcel no. 15 to answer to the amounts of: $76,670.28 for taxes; $7,666.96 for surcharges and $18,606.36 for costs, for a total of: $102,943.60, due on property taxes; entered with

the order number: 088, case number: 630106409; date of presentation and recording: December 26, 1979 and date of the certificate: December 26, 1979.

-----That on page 99 of volume I of the Registry of Liens due to the Commonwealth of Puerto Rico of Ponce II there is a entry entered against James T. Barnes of P.R. Inc., (prior owner of this property) on a piece of rural property, Punto Oro Main Property, with an area of 90 cuerdas, and with the following boundaries: North: Municipal Dump and Jardines del Caribe Development; South: Road from Ponce to Guayanilla; East: Canas River and West: Pastillo River; to answer to the sums of $76,670.28 for taxes; $17,976.12 for surcharges and $7,666.96 for costs, for a total of: $102,313.36 due for property taxes; entered with the order number: 0394; date of presentation and recording: October 20, 1980 and date of the certificate, October 17, 1980.

-----From the indexes of the Registry of Liens owed to the Commonwealth of Puerto Rico of Ponce I, numbers 65, 66, 67, 68, 69 and 70 for Ponce I and numbers 1, 2, 3, 4 and 5 for Ponce II; for the indexes of Federal Liens number 1 for Ponce I and number 1 for Ponce II and from the indexes of the Registry of Judgments number 2 for Ponce I and number 1 for Ponce II, the specific name of H.P.Y. Inc. DOES NOT APPEAR, looking under the letter "H," as an encumbered debtor.

-----No certification is given as to other particulars.

-----AND FOR THE RECORD, in accordance with what has been requested, I issue the present document which I sign, seal and initial in Ponce, Puerto Rico at three p.m. on October 22, 1987.

(Sgd./illegible)

Fees: $6.00 Atty. José L. Purcell Terrón
Comp. no. C-1894303-$6.00 Property Registrar
Act 3/August 12, 1982 Ponce Section II
Eb
[Department of Justice seal]

CERTIFIED TRANSLATION

FORM DJ-103
REV. 8/60
CERTIFICATION NOTEBOOK

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF JUSTICE
PROPERTY REGISTRY
SECTION II FOR PONCE
[Seal for the Property Registry]

CERTIFICATION

concerning plot number (43,077) 5869 recorded on page 111 of volume (1440) 598 of Ponce II.

Issued on the 22nd of October of 1987 at the behest of Atty. Ronald L. Rosenbaum

Commonwealth of Puerto Rico

Department of Justice

Property Registry

Section II for Ponce

ATTORNEY JOSE L. PURCELL TERRON, Property Registrar for Puerto Rico, Section II for Ponce and its Mortgage Demarcation:

I C E R T I F Y

-----That at the request of Atty. Ronald L. Rosenbaum, we have examined the legible books for this Registry in our custody, and it APPEARS from these:

-----FIRST: That the piece of property: previously number 43,077 for Ponce I, presently number 5869 for Ponce II appears described on page 111 of the volume: previously 1440 for Ponce I, presently 598 for Ponce II, 1st entry as follows:

RURAL: parcel of land located in Canas Ward ~~in the~~ municipal district of Ponce, Puerto Rico with an area of ELEVEN POINT SIX THOUSAND SIX HUNDRED SIXTY-SIX CUERDAS equivalent to FORTY-FIVE THOUSAND EIGHT HUNDRED FIFTY-FOUR POINT FOUR THOUSAND FORTY-SIX SQUARE METERS (45,854.4046), bounded on the North by a parcel identi-

fied by the letter (A) on the subdivision map made by the engineer, Rafael Dosal Lines, in other words, with more land from the ninety cuerda parcel from which this parcel is subdivided, said boundary being a single alignment of one thousand one hundred fifty-five point three hundred fifty (1,155.350) meters; on the South by one single alignment of one thousand one hundred thirty-nine point five hundred eighty-seven meters, bounded by land subdivided from the ninety cuerda parcel identified as Parcel "B" on the above-mentioned map made by the engineer, Rafael Dosal Lines; on the East, by one single alignment of forty point fifteen meters bounded by the Punto Oro Development, and on the West by one single alignment of forty-one point five hundred four (41.504) meters, bounded by more land from the main parcel known as Hacienda Matilde, property belonging to the Mario Mercado and Sons

Partnership.

-----In the document that gave rise to the 2nd entry of said property on the back of page 112 of the previously mentioned volume it is said that it is bound on the East by one single alignment of forty-one point five hundred four (41.504) meters bounded by more land from the main parcel known as Hacienda Matilde, property belonging to the Mario Mercado and Sons Partnership, from which the ninety cuerda parcel was subdivided, omitting the Western boundary.

-----SECOND: That the piece of property described above is entered on behalf of H.P.Y. INC., a corporation organized and existing under the laws of the State of Delaware, represented in the execution by Mildred Ulmo, of legal age, single, a secretary and resident of Carolina, with accredited authority, who acquired it by way of purchase for a price of $113,000.00; in virtue of deed number 40, executed in San Juan,

on November 10, 1981, before the notary William Joseph Luckeroth, written in the English language; as referred to in the 6th entry of said property, made on page 116 of the previously mentioned volume 705.

-----THIRD: That the status of said property as far as encumbrances and liens is as follows:

-----BY WAY OF ORIGIN: From the 1st entry of said property previously mentioned, it appears that this property is subject to the following encumbrances due to its origin: Entry for a complaint for dissolution of partnership, civil case number CS-57-2295 and rights-of-way in the name of the Commonwealth of Puerto Rico.

-----ON ITS OWN BEHALF: Said property is found to be FREE OF ENCUMBRANCES:

O B S E R V A T I O N

-----That on page 22 of volume I of the Registry of Liens for the Commonwealth of Puerto Rico for Ponce II there is a lien entered against James T. Barnes (prior owner of this property) for a piece of urban property located in Canas Ward with an area of 90.00 cuerdas, and with the following boundaries: NW: Parcel no. 2; SW: 410-0000-010-01; SE: Parcel no. 15 and NE: Parcel no. 15 to answer to the amounts of: $76,670.28 for taxes; $7,666.96 for surcharges and $18,606.36 for costs, for a total of: $102,943.60, due on property taxes; entered with the order number: 088, case number: 630106409; date of presentation and recording: December 26, 1979 and date of the certificate: December 26, 1979.

-----That on page 99 of volume I of the Registry of Liens due to the Commonwealth of Puerto Rico of Ponce II there is a lien entered against

James T. Barnes of P.R. Inc., (prior owner of this property) on a piece of rural property, located in Punto Oro - Main Property, with an area of 90 cuerdas, and with the following boundaries: North: Municipal Dump and Jardines del Caribe Development; South: Road from Ponce to Guayanilla; East: Canas River and West: Pastillo River; to answer to the sums of $76,670.28 for taxes; $17,976.12 for surcharges and $7,666.96 for costs, for a total of: $102,313.36 due for property taxes; entered with the order number: 0394; date of presentation and recording: October 20, 1980 and date of the certificate, October 17, 1980.

-----From the indexes of the Registry of Liens owed to the Commonwealth of Puerto Rico of Ponce I, numbers 65, 66, 67, 68, 69 and 70 for Ponce I and numbers 1, 2, 3, 4 and 5 for Ponce II; for the indexes of Federal Liens number 1 for Ponce I and number 1 for Ponce II and from the indexes of the Registry of Judgments number 2 for Ponce

I and number 1 for Ponce II, the specific name of H.P.Y. Inc. DOES NOT APPEAR, looking under the letter "H," as an encumbered debtor.

-----No certification is given as to other particulars.

-----AND FOR THE RECORD, in accordance with what has been requested, I issue the present document which I sign, seal and initial in Ponce, Puerto Rico at three p.m. on October 22, 1987.

(Sgd./illegible)

Fees: $6.00 Atty. José L. Purcell Terrón

Comp. no. C-1894303-$6.00 Property Registrar

Act 3/August 12, 1982 Ponce Section II

eb

[Department of Justice seal]

CERTIFIED TRANSLATION

FORM DJ-103

REV. 8/60

CERTIFICATION NOTEBOOK

COMMONWEALTH OF PUERTO RICO

DEPARTMENT OF JUSTICE

PROPERTY REGISTRY

SECTION II FOR PONCE

[Seal for the Property Registry]

CERTIFICATION

concerning plot number (44,915) 5870 recorded on page 282 of volume (1488) 625 of Ponce II.

Issued on the 23rd of October of 1987 at the behest of Atty. Ronald L. Rosenbaum

A-148

Commonwealth of Puerto Rico

Department of Justice

Property Registry

Section II for Ponce

ATTORNEY JOSE L. PURCELL TERRON, Property Registrar for Puerto Rico, Section II for Ponce and its Mortgage Demarcation:

I C E R T I F Y

-----That at the request of Atty. Ronald L. Rosenbaum, we have examined the legible books for this Registry in our custody, and it APPEARS from these:

-----FIRST: That the piece of property: previously number 44,915 for Ponce I, presently number 5870 for Ponce II appears described on page 282 of the volume: previously 1488 for Ponce I, presently 625 for Ponce II, 1st entry as follows:

RURAL: Parcel of land located in Canas Ward in the municipal district of Ponce, Puerto Rico with a surface area of forty-five thousand eight hundred forty-nine point three thousand five hundred thirty-nine square meters (45,849.3539), equivalent to eleven point six hundred sixty-six (11.666) cuerdas. Bounded on the North, in one single direction and for a distance of one thousand one hundred seventy point nine hundred seventeen meters by the parcel marked "A" on the map made by the engineer, Rafael Dosal Lines; on the South, in a single direction and for a distance of one thousand one hundred fifty-five point three hundred fifty meters by the parcel marked "C" on the above-mentioned map that was subdivided from the ninety cuerda parcel from which remainder this parcel is subdivided; on the East, in a single direction by land belonging to the Punto Oro Development for

a distance of thirty-nine point four hundred eighty-four meters; and on the West, in a single direction and for a distance of forty-one point zero sixty-five meters, by property from the Hacienda Matilde, belonging to the Mario Mercado and Sons Partnership from which the ninety cuerdas were subdivided from which remainder this parcel is subdivided.

-----SECOND: That the piece of property described above is entered on behalf of H.P.Y. INC., a corporation organized and existing under the laws of the State of Delaware, represented in the execution by Mildred Ulmo, of legal age, single, a secretary and resident of Carolina, with accredited authority, who acquired it by way of purchase for a price of $113,000.00; in virtue of deed number 40, executed in San Juan, on November 10, 1981, before the notary William Joseph Luckeroth, written in the English language; as referred to in the 6th entry of

said property, made on the back of page 286 of the previously mentioned volume.

-----THIRD: That the status of said property as far as encumbrances and liens is as follows:

-----BY WAY OF ORIGIN: From the 1st entry of said property that was previously mentioned, it appears that this property is subject to the following encumbrances due to its origin: Notice of a complaint for Dissolution of Partnership, and rights-of-way in the name of the Commonwealth of Puerto Rico.

-----ON ITS OWN BEHALF: Said property is found to be FREE OF ENCUMBRANCES:

O B S E R V A T I O N

-----That on page 22 of volume I of the Registry of Liens for the Commonwealth of Puerto Rico for Ponce II there is a lien entered against James

T. Barnes (prior owner of this property) for a piece of urban property located in Canas Ward with an area of 90.00 cuerdas, and with the following boundaries: NW: Parcel no. 2; SW: 410-0000-010-01; SE: Parcel no. 15 and NE: Parcel no. 15; to answer to the amounts of: $76,670.28 for taxes; $7,666.96 for surcharges and $18,606.36 for costs, for a total of: $102,943.60, due on property taxes; entered with the order number: 088, case number: 630106409; date of presentation and recording: December 26, 1979 and date of the certificate: December 26, 1979.

-----That on page 99 of volume I of the Registry of Liens due to the Commonwealth of Puerto Rico for Ponce II there is a lien entered against James T. Barnes of P.R. Inc., (prior owner of this property) on a piece of rural property, Punto Oro Main Property, with an area of 90 cuerdas, and with the following boundaries: North: Municipal Dump and Jardines del Caribe

Development; South: Road from Ponce to Guayanilla; East: Canas River and West: Pastillo River; to answer to the sums of $76,670.28 for taxes; $17,976.12 for surcharges and $7,666.96 for costs, for a total of: $102,313.36 due for property taxes; entered with the order number: 0394; date of presentation and recording: October 20, 1980 and date of the certificate, October 17, 1980.

-----From the indexes of the Registry of Liens owed to the Commonwealth of Puerto Rico for Ponce I, numbers 65, 66, 67, 68, 69 and 70 of Ponce I and numbers 1, 2, 3, 4 and 5 for Ponce II; for the indexes of Federal Liens number 1 for Ponce I and number 1 for Ponce II and from the indexes of the Registry of Judgments number 2 for Ponce I and number 1 for Ponce II, the specific name of H.P.Y. Inc. DOES NOT APPEAR, looking under the letter "H," as an encumbered debtor.

-----No certification is given as to other particulars.

-----AND FOR THE RECORD, in accordance with what has been requested, I issue the present document which I sign, seal and initial in Ponce, Puerto Rico at three p.m. on October 23, 1987.

(Sgd./illegible)

Fees: $6.00 Atty. José L. Purcell Terrón

Comp. no. C-1894303-$6.00 Property Registrar

Act 3/August 12, 1982 Ponce Section II

eb

[Department of Justice seal]

CERTIFIED TRANSLATION

FORM DJ-103

REV. 8/60

CERTIFICATION NOTEBOOK

COMMONWEALTH OF PUERTO RICO

DEPARTMENT OF JUSTICE

PROPERTY REGISTRY

SECTION II FOR PONCE

[Seal for the Property Registry]

CERTIFICATION

concerning plot number (44,916) 9463 recorded on page 290 of volume (1488) 625 of Ponce II.

Issued on the 23rd of October of 1987 at the behest of Atty. Ronald L. Rosenbaum

A-156

Commonwealth of Puerto Rico

Department of Justice

Property Registry

Section II for Ponce

ATTORNEY JOSE L. PURCELL TERRON, Property Registrar for Puerto Rico, Section II for Ponce and its Mortgage Demarcation:

I C E R T I F Y

-----That at the request of Atty. Ronald L. Rosenbaum, we have examined the legible books for this Registry in our custody, and it APPEARS from these:

-----FIRST: That the piece of property: previously number 44,916 for Ponce I, presently number 9463 for Ponce II appears described on page 290 of the volume: previously 1488 for Ponce I, presently 625 for Ponce II, 1st entry as follows:

RURAL: Parcel of land located in Canas Ward in the municipal district of Ponce, Puerto Rico with a surface area of ELEVEN POINT SIX HUNDRED SIXTY-SIX (11.666) CUERDAS equivalent to FORTY-FIVE THOUSAND EIGHT HUNDRED FORTY-NINE POINT THREE THOUSAND FIVE HUNDRED THIRTY-NINE SQUARE METERS. Bounded on the North, in one single direction and for a distance of one thousand eighty-eighty point six hundred seventy meters by the parcel marked "A" on the subdivision map made by the engineer, Rafael Dosal Lines; on the South, in a single direction and for a distance of one thousand one hundred seventy point nine hundred seventeen meters by the parcel marked "D" on the above-mentioned subdivision map that was subdivided from the ninety cuerda parcel from which remainder this parcel is subdivided; on the East, in a single direction by land belonging to the Punto Oro Development for

a distance of thirty-eight point nine hundred ninety-three meters; and on the West, in a single direction and for a distance of forty point two hundred forty-three meters, by property from the Hacienda Matilde, belonging to the Trusteeship for the Mario Mercado and Sons Partnership from which the ninety cuerdas were subdivided from which remainder this parcel is subdivided.

-----SECOND: That the piece of property described above is entered on behalf of H.P.Y. INC., a corporation organized and existing under the laws of the State of Delaware, represented in the execution by William Joseph Luckeroth, its legal representative, of legal age, divorced, an attorney and resident of Santurce, with accredited authority, who acquired it by way of purchase at a public auction for a price of $17,345.00; in virtue of deed number 33, executed in San Juan, on March 12, 1985, before

the notary Rafael E. Robles Díaz, which together with other supplementary documents gave rise to the 4th entry of said property, made on the back of page 292 of the previously mentioned volume.

-----THIRD: That the status of said property as far as encumbrances and liens is as follows:

-----BY WAY OF ORIGIN: From the 1st entry of said property that was previously mentioned, it appears that this property is subject to the following encumbrances due to its origin: Notice of a complaint for Dissolution of Partnership, and rights-of-way in the name of the Commonwealth of Puerto Rico.

-----ON ITS OWN BEHALF: Said property is found to be FREE OF ENCUMBRANCES:

O B S E R V A T I O N

-----That on page 22 of volume I of the Registry

of Liens for the Commonwealth of Puerto Rico for Ponce II there is a lien entered against James T. Barnes (prior owner of this property) for a piece of urban property located in Canas Ward with an area of 90.00 cuerdas, and with the following boundaries: NW: Parcel no. 2; SW: 410-0000-010-01; SE: Parcel no. 15 and NE: Parcel no. 15; to answer to the amounts of: $76,670.28 for taxes; $7,666.96 for surcharges and $18,606.36 for costs, for a total of: $102,943.60, due on property taxes; entered with the order number: 088, case number: 630106409; date of presentation and recording: December 26, 1979 and date of the certificate: December 26, 1979.

-----That on page 99 of Volume I of the Registry of Liens due to the Commonwealth of Puerto Rico for Ponce II there is a lien entered against James T. Barnes of P.R. Inc., (prior owner of this property) on a piece of rural property, Punto Oro Main Property, with an area of 90

cuerdas, and with the following boundaries:

North: Municipal Dump and Jardines del Caribe Development; South: Road from Ponce to Guayanilla; East: Canas River and West: Pastillo River; to answer to the sums of $76,670.28 for taxes; $17,976.12 for surcharges and $7,666.96 for costs, for a total of: $102,313.36 due for property taxes; entered with the order number: 0394; date of presentation and recording: October 20, 1980 and date of the certificate, October 17, 1980.

-----From the indexes of the Registry of Liens owed to the Commonwealth of Puerto Rico for Ponce I, numbers 65, 66, 67, 68, 69 and 70 for Ponce I and numbers 1, 2, 3, 4 and 5 for Ponce II; for the indexes of Federal Liens number 1 for Ponce I and number 1 for Ponce II and from the indexes of the Registry of Judgments number 2 for Ponce I and number 1 for Ponce II, the specific name of H.P.Y. Inc. DOES NOT APPEAR,

looking under the letter "H," as an encumbered debtor.

-----No certification is given as to other particulars.

-----AND FOR THE RECORD, in accordance with what has been requested, I issue the present document which I sign, seal and initial in Ponce, Puerto Rico at three p.m. on October 23, 1987.

(Sgd./illegible)

Fees: $6.00 Atty. José L. Purcell Terrón

Comp. no. C-1894303-$6.00 Property Registrar

Act 3/August 12, 1982 Ponce Section II

eb

[Department of Justice seal]